## United States Court of Appeals for the Second Circuit



**APPENDIX** 

# 74-1917 74-1946

B

ORIGINA

In The

### United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

ANTHONY POLITI, GERALD POLITI, PHILIP POLITI, MICHAEL ROMAN, ROBERT PETERS, MICHAEL CAMPOREALE, ALPHONSE CUZZO, ARTHUR FRANGELLO, LEONARD HARRISON, LAWRENCE JOHNSON, LOUIS VISCONTI, EDDIE WASHINGTON, and HARRY WEIS,

Appellants.

On Appeal from the United States District Court for the Southern District of New York.

#### APPENDIX

Volume III pp. 662a - End

HERALD PRICE FAHRINGER

One Niagara Square Buffalo, New York 14202 (716) 856-8400 IRVING ANOLIK 225 Broadway

New York, New York 10007

(212) 732-3050

Attorneys for Appellants

LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing

South River, N. J. (201) 257-6850

(7580)

New York, N. Y. (212) 565-6377 Philadelphia, Pa. (215) 563-5587 Washington, D C (202) 783-7288

SEP 16 1974

PAGINATION AS IN ORIGINAL COPY

#### TABLE OF CONTENTS

#### Appendix

	Page
Docket Entries	1a
Indictment (Filed January 18, 1973)	6a
Stipulation Re Testimony of Robert Hla- watsch	16a
Stipulation Re Joe Tripodo	17a
Stipulation Re Testimony of Dan Reidy	18a
Stipulation Re Testimony of Aerel Simon	19a
Stipulation Re Testimony of Patricia Hyatt.	23a
Stipulation Re Raymond Shaw Re Government Exhibit 2a	28a
Stipulation Re Testimony of Joe Tripodo	29a
Stipulation Re Gambling Material Referring to Beaman Bowman	30a
Stipulation for Double Jeopardy Contention	31a
Stipulation Re Relationship of Politis	32a
Stipulation Re Testimony of Dan Reidy, Joe Tripodo and Harry Mills	33a

	Page
Stipulation Re Testimony of Dan Reidy and Joe Tripodo	36a
Stipulation Re Testimony of Lance Emory, Carl Adamitz and Jeff McMurtrey	38a
Stipulation Re Testimony of Acrel Simon.	39a
Stipulation Re Testimony of Patricia Hyatt.	43a
Stipulation Re Testimony of Raymond Shaw and Robert Parkhurst	48a
Stipulation Re Testimony of Ray Shaw	49a
Stipulation Re Testimony of Eileen Moran.	50a
Stipulation Re Testimony of Raymond Shaw	52a
Stipulation for the Purpose of Double Jeopardy Contention	55a
Exhibit A — List of Co-Conspirators Annexed to Foregoing Stipulation	58a
Exhibit B - Indictment 71 Civ. 857 Annexed to Foregoing Stipulation	60a
Stipulation Re Testimony of Roy Hyatt	63a
Stipulation Re Testimony of Bobby Rattiffe.	67a

	Page
Stipulation Re Testimony of Robert Hla- watsch	70a
Stipulation Re Testimony of F.B.I. Agents.	71a
Stipulation Re Testimony of David Weygant.	81a
Stipulation Re Testimony of Dan Reidy	86a
Affidavit of J. Lawrence Silverman	87a
Affidavit of W. T. Kunowski	92a
Eavesdropping Warrant Renewal	98a
Affidavit of Angelo J. Ingrassia in Support of Eavesdropping Warrant Renewal	101a
Affidavit of W. T. Kunowski in Support of Eavesdropping Warrant Renewal	103a
Eavesdropring Warrant Renewal	105a
Affidavit of Angelo J. Ingrassia in Support of Eavesdropping Warrant Renewal.	107a
Affidavit of W. J. Kunowski in Support of Eavesdropping Warrant Renewal	109a
Affidavit of Angelo J. Ingrassia in Support of Eavesdropping Warrant Renewal	111a

	Page
Affidavit of W. T.Kunowski in Support of Eavesdropping Warrant Renewal	115a
Affidavit of Angelo J. Ingrassia in Sup- port of Eavesdropping Warrant Re- newal	117a
Affidavit of W. T. Kunowski in Support of Eavesdropping Warrant	120a
Eavesdropping Warrant Renewal	124a
Transcript of Telephone Conversation Between Tony Politi and Allen Handler Between 2:30 P.M. June 15, 1970 and 11:30 A.M. June 16, 1970	127a
Supplementary Notice of Motion to Suppress (Filed March 22, 1973)	145a
Affidavit of Herald Price Fahringer in Support of Motion	147a
Exhibit A - Affidavit of Bob C. Reutter Annexed to Foregoing Affidavit	153a
Supplementary Notice of Motion to Suppress No. 2	161a
Affidavit of Herald Price Fahringer in Support of Motion	163a

	Page
Exhibit A — Search Warrant Annexed to Foregoing Affidavit	166a
Affidavit of Joel M. Friedman in Opposition.	170a
Letter of Joseph P. McNally Dated July 31, 1972 to District Attorney Rockland County	182a
Letter of Department of Justice Dated February 22, 1973 to Herald Price Fahringer	187a
Notice of Motion in Behalf of Anthony Politi in Support (Filed March 9, 1973)	192a
Statement of Vincent W. Lanna in Support of Motion	193a
Exhibit C — Report on Questioned Documents Annexed to Foregoing Statement	196a
Notice of Motion in Behalf of Defendants Frangello and Visconti (Filed March 7, 1973)	207a
Statement in Support of Said Motion	209a
Memorandum of Law in Support of Said Motion for Bill of Particulars	· 214a

	Page
Motion for Severance	219a
Memorandum of Law in Support of Said Motion for Severance	220a
Motion in Behalf of Defendants Frangello and Visconti to Dismiss Indictment	222a
Memorandum of Law in Support of Motion to Dismiss Indictment	223a
Motion in Behalf of Defendants Fran- gello and Visconti for Discovery and Inspection	226a
Motion in Behalf of Defendants Fran- gello and Visconti to Suppress Evi- dence	227a
Memorandum of Law in Support of Motion to Suppress	228a
Government's Bill of Particulars	231a
Government's Bill of Particulars	237a
Affidavit of Joel M. Friedman in Opposition	238a
Motion in Behalf of Defendant Roman (Filed March 7, 1973)	240a

	Page
Affidavit of Herald Price Fahringer in Support of Said Motion	243a
Exhibits Annexed to Foregoing Affidavits:	
A — Indictment	306a
C - Search Warrant and Supporting Affidavit of Robert V. Parkhurst	316a
D — Search Warrant and Supporting Affidavit of D. J. Reidy and Federal Search Warrant and Supporting Affidavit of Bob C. Reutter	32 <b>4</b> a
F - Search Warrant and Supporting Affidavit of J. A. Tripodo	341a
Federal Search Warrant and Supporting Affidavit of Bob C. Reutter	348a
Affidavit of Gerard L. Goettel for Search Warrant and Search Warrant	356a
Affidavit of Gerard L. Goettel for Search Warrant and Search Warrant	359a
Memorandum of Lasker, D. J. Dated June 8, 1973	. 366a

#### viii

1	Page
Transcript of Proceedings Before Lasker, D.J. on April 2, 3, 4, 1973 (Suppression Hearing)	390a
Transcript of Proceedings Before Lasker, D.J. on June 11, 12, 1973	800a
Memorandum and Verdict of Lasker, D.J. Dated October 23, 1973	951a
Witnesses	
Allen Lance Emory: Direct	411a 426a , 483a 480a
Michael Growney: Direct	491a 496a 506a 507a
Direct	513a 522a
James Boylan: Direct	524a 531a

		F	age
Michael Camporeale:			
Direct			549a
Cross			556a
Closs			
Raymond Shaw:			
Direct	•		576a
Cross			613a
Robert Parkhurst:			
Direct	6	16a,	779a
Cross	•	•	623a
Anthony F. Politi, Sr.:			625a
Direct	•	•	625a
Cross	•	٠	631a
m			
Pearl L. Tytell:			662a
Direct	•	•	697a
Redirect	•	•	706a
Redirect	•	•	
Toronh D. MoNolly:			
Joseph P. McNally: Direct			708a
Cross			722a
Redirect			743a
Recross			745a
Recross			
William McKenna:			
Direct			755a
Cross			763a
Redirect			776a
110011000			

	Page
Carl W. Amaditz:	
Direct	 782a
Cross	 787a
R. Phillip Harker:	
Direct	 833a
Cross	 870a
Redirect	887a
Recross	 889a

1 jwrf 3-1

2

3

4

5

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. FRIEDMAN Thank you.

PEARL L. TYTELL, a witness, being

first duly sworn, testified as follows:

THE COURT: I suggest, Mr. Friedman, this gentleman sit up here in the jury box so he can hear what is said.

Is it Miss or Mrs.?

THE WITNESS: Mrs.

#### DIRECT EXAMINATION

#### BY MR. LANNA:

0 Mrs. Tytell, what is your profession?

A I am a qualified document examiner. That deals with the examination and identification of handwriting, typewriting paper, determination of alterations, additions, erasures, corrections, interlineations and those factors that deal with the examination and identification of documents.

O And for how long have you been engaged in this profession?

A For over 20 years.

O And what training or experience have you had in connection with this occupation?

A My formal education consists of a Bachelor

of Science and Master of Arts degree from New York University,

and I have studied the literature on the subject of

1	jwrf 2 Tytell - direct
2	questioned documents, the identification of handwriting and
3	typewriting. I have visited numerous factories in dealing
4	with the manufacture of typewriters and type, as well.
5	I have studied the subject, I keep abreast of
6	the literature. I have conducted individual research pro-
7	jects in connection with handwriting and typewriting
8	identification.
9	O Have you ever testified in a court of law in
10	connection with this specialty of yours?
11	A Yes, I have.
12	O And will you tell us approximately how many times?
13	A Well, I would say over 200 times.
14	O And in both civil and criminal areas?
15	A Very rarely in criminal matters; mostly in civil.
16	Q And have you testified both for defendants and
17	plaintiffs?
18	A Yes.
19	O And how about prosecutors?
20	A Yes, I have been retained and testified on behalf
21	of the state and I also have been retained by the United
22	States Attorney's office.
23	O In this district?
24	A Yes, sir.
25	O Have you ever written any books or articles

A Well there has been an article published that

in connection with your profession?

my husband and I have co-authored and it was originally a paper given at a seminar at an annual meeting of the American Society of Criminology and published in the Crimnologica.

That was in 1965.

Also a portion of my report was published in connection with a case that I worked on and retained by Life Magazine and that was published in Life in October 1963.

Now, Mrs. Tytell, I am going to show you Joint
Exhibit 5 in evidence and also Joint Exhibit 6 in evidence,
if I may, to expedite this, and ask if you recognize either
of those documents?

A Yes, I do.

THE COURT: Are you referring to both or one?

THE WITNESS: I have just looked at a two-page document which is Exhibit 5, and I am now going to look at Exhibit 6.

Yes, sir, I do recall these documents.

O Would you be kind enough to tell his Honor where you have seen these documents or duplicate copies of these documents before?

A I saw these very documents, the originals, your Honor, first in June of 1972. I did see copies of them

sometime earlier that year.

1

2

3

4 5

6

7

8 9

10

11

12

13

14

15

16

17 18

19

20

21

22

24

23

25

O Would you he kind enough to tell his Honor as to these documents, that is, 5 and 6, I believe, when -you have told us when, but under what circumstances did you have occasion to examine these documents?

A Both Exhibits 5 and 6 were brought to my office at 116 Fulton Street in Manhattan by a Mr. Stewart and was present that whole day during which time the documents were examined by me and my husband and my son in my laboratories. The examination was for the purpose of identifying the typewriter used on the particular pages, to analyze the arrangement of the documents insofar as the typist habits were concerned, to also examine the paper on which these documents were prepared and to identify whether or not they were documents that were typed in a continuous manner.

O Mrs. Tytell, what significance in your profession is it as to whether or not a document is typed in a continuous manner?

MR. FRIEDMAN: Your Honor, I object. That calls for a conclusion outside the expertise of the witness.

THE COURT: I wouldn't call it a conclusion outside the expertise of the witness, but I don't know the significance of that question. It seems to me what I decide is the significance of it is within the legal profession and as a matter of law.

4 5

The only significance I can see is somebody doing this kind of work would be deeply interested in, but I have no doubt Mr. Friedman will concede this witness was deeply interested in the examination.

MR. LANNA: May I suggest for what it is worth, if your Honor please, from my particular knowledge of this particular field, it is common knowledge among experts in this field that has a special significance as to documents.

THE COURT: We are taking more time to determine whether it is relevant so I don't think it will be harmful if I hear it.

A When a document is typed, a multi-page document particularly, it is typed in a continuous manner. At least there is on the surface an indication that there were no pages substituted. And there are many factors that would go into determining whether or not documents were probably typed in a continuous manner or that they were not typed in a continuous manner.

THE COURT: All right.

O Now, Mrs. Tytell, did you make any -- in connection with your examination of both of these exhibits, one of which, I believe, 5 has two pages and 6 has six pages --

	7; 667a
1	jwrf 6 Tytell - direct
2	A That is correct.
3	O am I correct?
4	Did you make any photographs of these?
5	A Yes, there were photographs taken of both sets
6	of documents and they were taken with the proper with
7	the for the purpose of, one, photographing the document
8	so that we would have at least a picture of them after
9	the documents left our office, and in addition, to determine,
10	if we do, particular watermarks on the paper and to identify
11	their origin.
12	O Were these documents ever left with you in your
13	own custody?
14	A No, never.
15	O All right.
16	Would you be kind enough to tell the Court how
17	they were taken there and what occurred while they were
18	there and how they were removed from your possession?
19	A They were brought to
20	MR. FRIEDMAN: Excuse me, one moment. Is the
21	witness reading from something, or do you just have the

THE COURT: She has the exhibits in front of her.

exhibits in front of your?

23

24

25

MR. FRIEDMAN: All right, thank you.

Stewart --

1

3

4

5

6 7

8

9

10

11

12

13

14

15

16

17

18

19 20

21

22

23 24

25

THE COURT: Who is Mr. Stewart?

A They were brought to our laboratory by Mr.

MR. LANNA: Well, Mr. Stewart is, I believe, associated with the Rockland County District Attorney's office as an investigator.

THE COURT: Is that right?

MR. FRIEDMAN: I don't know, your Honor. I would assume that is the case.

THE COURT: All right. You said he stayed there all day while he examined them.

THE WITNESS: Yes.

THE COURT: Did he then take them away? THE WITNESS: Yes.

They were never at any time left with you?

No, sir. A

Now, would you be kind enough to tell his Honor exactly the tests which were performed and whatever analysis was performed by your office in your laboratory in connection with these exhibits?

A In addition to just a gross examination of the documents, a visual examination, an additional visual examination was conducted under the microscope under at least two different microscopes, both of which are

binocular stereoscopic microscopes at different magnifications.

The purpose of that was to determine the particular type

design and features of it that would identify it as a

particular typewriter, or at least by brand.

And then further to determine whether or not the same typewriter was used throughout the documents.

Also, whether or not the same typewriter was used for both proofs of documents.

Another factor that was considered is whether or not it could be determined whether the same typewriter ribbon was present and the typewriter, when these particular pages were prepared.

THE COURT: Right.

A All of which would be factors to be considered in evaluating the total examination and whether or not they were, in fact, continuously prepared.

THE COURT: I understand.

O Would you be kind enough to tell his Honor what, if any, findings were made?

A Yes, taking Exhibit 5 which consists of two pages --

O I wonder if I may be permitted -- I know you have some photographic --

A Yes, sir.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. LANNA: Perhaps we can mark these and I think they would be an assistance to your Honor, certainly.

THE WITNESS: I am now giving Mr. Lanna two mounted photographs which are photographs of the two-page Exhibit 5.

THE COURT: These are photographs, I guess, that you took at your studio?

THE WITNESS: No, they were not taken at my office, but they were taken just a few buildings away.

THE COURT: Then you arranged to have them photographed?

THE WITNESS: Yes, and Mr. Stewart was present when they were photographed.

THE COURT: All right.

MR.LANNA: May we have these marked as Exhibit 5-A for identification -- Joint Exhibit 5-A for identification.

THE COURT: You may.

MR. LANNA: And I think perhaps, your Honor, if I can hand these to your Honor it might be of assistance.

THE COURT: All right.

MR. FRIEDMAN: Your Honor, if I can look at them for one second, I won't object to them.

THE COURT: They do contain comments on the side

1

of them.

3

4

5

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

25

MR. FRIEDMAN: Yes.

THE COURT: Am I supposed to be looking at a set of these?

MR. LANNA: Don't you have a set, Judge?

THE COURT: Mr. Friedman has. I have it.

I take the material in what appears to be hand inked writing on the left margin of each of these mounted exhibits is not part of the photographs.

THE WITNESS: No, sir.

THE COURT: And the arrows are not part of the photographs.

THE WITNESS: No, sir.

MR. LANNA: That is foreign and I believe she will explain the legend.

THE COURT: Surely.

O Now, Mrs. Tytell, will you be kind enough to explain to his Honor the examination which you performed on Exhibit 5 and the conclusions?

A Well, the notes that you referred to, your Honor, are put there in order to call attention to some of the findings in connection with the two documents.

THE COURT: Right.

A That which is not present in the notes that

1

4

5

6 7,

-

9

11

12

13 14

15

16

17

18

19 20

21

22

23

2425

you referred to, your Honor, is the fact that there are two distinctly different types of paper used in the two documents which is not reflected in the photographs or the comments in the margin.

It can be observed just with the naked eye that you have two qualities of paper. They are different in the thickness, just to the feel, and they are different in color.

MR. FRIEDMAN: Your Honor, I will stipulate that the two pieces of paper are different.

THE COURT: All right.

MR. LANNA: Thank you, sir.

THE COURT: By that you mean different kinds of paper, Mr. Friedman?

MR. FRIEDMAN: Yes, your Honor, and I also stipulate that the typewriting on the first page of the search warrant is different than the typewriting on the second page of the search warrant.

MR. LANNA: May I just have a clarification of that stipulation? Do you mean the typewriting on the first and second pages is done by a different typewriter and a different typist?

MR. FRIEDMAN: No, not a different typist, but a different typewirter, your Honor.

7;

THE COURT: All right, the Government will stipulate that the typing on the two pages is different in type and each page was typed by a different typwriter; is that correct?

MR. FRIEDMAN: Yes, sir.

THE COURT: All right.

THE WITNESS: In connection with those two findings, those that Mr. Friedman just stated, it should be considered that we have here a rather brief document.

THE COURT: Yes?

that appears on page 2 of Exhibit 5 is a rather limited amount of typewriting and that in my experience in examining documents that when you have a brief document and with just a very limited amount of typewriting on page 2 that to have it on an entirely different kind of paper and on an entirely different typewriter does raise very definite questions and investigation of that particular document should be pursued.

Please note, your Honor, that on page 1, note the lines that I have in the margin on the photographic mounting there.

THE COURT: I see them, with the 1, 2, and the arrows and lines and so on?

THE WITNESS: The purpose for that is to indicate

1

THE WITNESS: Yes, sir.

3

THE COURT: Yes?

5

2

the spacing that the typist used.

6

THE COURT: Yes.

7

8

9

10

11

12

13

14

15

16

17 18

19

20

21

22

23

25

THE WITNESS: That is, that from the hypenated line under the heading to the first line which is all in capitals starting with "In the name of" -- there are two spaces and that is controlled by setting a designated

space -- line spacer indicator at two and will go to two, or if it is set at one, then the typist will just move the line space lever or the button in this instance,

THE COURT: Yes.

this being an IBM typewriter, twice.

THE WITNESS: And it will just go to the designated two spaces.

The line beneath it, "to any peace officer," is a single space or one space, but then when you go to the next line, "proof by affidavit," between that line, "to any peace officer," and "proof by affidavit," there is neither a single space nor a double space. The typist used what is known as the detent and the variable in order to get in between the line so that the typist has one plus spaces.

1

3 4

5

6

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: Yes.

THE WITNESS: That is done in order to save space, not wanting to use a double space, when we see the totality of the page where it is considered, except for a few of the captions and the insert or the inset single space, it is what would be considered a double space typed page. But we have less than a double space there.

THE COURT: I see.

THE WITNESS: Going down to the bottom of the page after the word "property" where you have the beginning of the inset, there again rather than using a double space and at that part in the document all that came above it, exclusive of the heading, was all in double space so that the typist again used the detent in order to get in between the line and there again you have one plus spaces there by saving some space.

Note, please, the page 2 in connection with spacing and there you have the page spread out where the typing portion is done in double space style, but between paragraphs you have four spaces, and then, of course, many more from the conclusion of the line, "This order is effective," until the portion that states the date and then, of course, a very large spacing again for the signature.

In a continuously typed document when it is indicated from the text that this probably will run more than one page that there isn't enough material on page 2 to have anticipated having to squeeze or condense. Where there was even a single space saved becomes important, plus, of course, the fact that you had two separate typewriters, two different qualities of paper, which could surely indicate that they were done at two different times, and would surely indicate that page 1 was prepared in order to save space and would lead to a conclusion that page 1 had to be prepared in order to match or fit into a pre-existing last page.

THE COURT: I understand everything you said.

THE WITNESS: A further examination of Exhibit 6 alongside of Exhibit 5 revealed some other factors.

. THE COURT: Have you some photographs of that you want me to look at?

THE WITNESS: Yes, sir.

THE COURT: All right. I am returning Joint Exhibit 5-A -- to whom?

MR. LANNA: Yes, sir. I think I will offer that into evidence if it is of assistance to your Honor.

MR. FRIEDMAN: I have no objection.

THE COURT: Received in evidence. But then it will be returned to Mr. Lanna.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

XX

XX

(Joint Exhibit 5-A received in 2 evidence.) 3

> MR. LANNA: If your Honor please, may we mark as Joint Exhibit 6-A for identification photograph pages 3, 4, 5 and 6, being that these are the only pages with which we are going to refer to for comparisons sake.

> > THE COURT: Those are pages of Joint Exhibit 6?

MR. LANNA: Yes, of the affidavit.

Do we have a copy for Mr. Friedman? Yes.

MR. FRIEDMAN: Thank you.

(Joint Exhibit 6-A marked for

identification.)

THE COURT: All right, madam, I am ready to hear your comments.

THE WITNESS: Please note on page 3 of Exhibit 6, there are indications in the margin for the abbreviation of post meridian.

THE COURT: Indications in the margin?

THE WITNESS: Of the photograph on page --

THE COURT: Page 6, you say?

THE WITNESS: Page 3.

MR. LANNA: Your Honor, unfortunately there is one page where the number isn't quite so clear.

THE COURT: That must be page 4.

25

24

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. LANNA: Page 4.

THE COURT: Yes.

MR. LANNA: It confused me and I am sure it might confuse your Honor.

THE COURT: You say page 3 in the margin it says "P.M." in several places?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. FRIEDMAN: Your Honor, I will stipulate on page 3 the last line which says "On each occasion" to "policy slips" that was done on a different typewriter than the other items on that page.

THE COURT: In other words, the last sentence on that page is stipulated to?

MR. FRIEDMAN: Yes.

MR. LANNA: I have no objection to that.

THE COURT: All right.

all of the instances where post meridian abbreviation occurs on page 3 was to compare it with the ante meridian abbreviation and post meridian abbreviation on page 1 of Exhibit 5. And I have that noted in the margin of the mounted photograph that is now marked 5-A.

THE COURT: I must have given it back. May I

see it?

MR. LANNA: She will only be referring to the first copy, your Honor.

THE WITNESS: And you will note on page 3 of
Exhibit 6 there are no punction marks as compared with the
two periods that exist after each of the initials on
the first page of Exhibit 5.

THE COURT: I do see that.

THE WITNESS: It is this kind of difference that is used to determine whether or not you have the same typist.

These are characterics that do identify a typist.

On page 4 in the margin of the mounted photograph you note that there is the word "jeep" and below it the abbreviation of New York "N.Y."

THE COURT: Right.

THE WITNESS: On page 5 -- and I am now referring to the photographs of Exhibit 6 --

THE COURT: On page 5, yes.

"green jeep" and "New York" spelled out. That refers to the line to which the arrow points where those words appear.

Please note that on page 1 of Exhibit 5 -- and it is noted on the photograph marked Exhibit 5-E -- that there you have the words "green jeep" and "New York" spelled

jwrf 19

Tytell - direct

out in the same way that you find it on page 5 of Exhibit 6.

So that page 5 and page 1 of Exhibit 5 correspond. You have the same style used.

However, on page 1 of Exhibit 5 it was noted that the abbreviations of ante meridian and post meridian are consistent in the way that it is punctuated as compared with page 3 on Exhibit 6 where a different style is used.

THE COURT: All right.

THE WITNESS: Indicating that the typist that typed page 3 of Exhibit 6 is someone other than the individual who typed page 1 of Exhibit 5.

However, when we get to page 5 of Exhibit 6, we find a correlation in the manner in which the typist expresses certain terms. And that becomes significant particularly when you look at page 4 of the six-page document where on page 4 there is just the word "jeep" and "N.Y." is abbreviated contrary to the manner in which it is expressed on the following page, page 5.

THE COURT: I understood that discrepancies and
I understood up to the point that the person in your opinion
who typed page 3 of Exhibit 6 is not the person who typed
page 1 on Exhibit 5.

THE WITNESS: Yes, your Honor.

THE COURT: Now, are you saying that the person

1 jwrf 20 Tytell - direct 2 who typed --3 THE WITNESS: Page 5 --THE COURT: -- Page 5 of Exhibit 6 is the same 4 as somebody who typed one of the other pages? And, if so, 5 6 which page. THE WITNESS: Page 1 of Exhibit 5 in my opinion 8 was probably typed by the individual who typed page 5 of 9 Exhibit 6. 10 THE COURT: Yes. MR. LANNA: May I? 11 12 BY MR. LANNA: 13 O Mrs. Tytell, page 5 of Exhibit 6 -- does the word "northeast" appear on that page? 14 A Yes. 15 16 0 All right. 17 And the paragraph just below the \_inal sentence. O Right. And it is your testimony based upon 18 your expertise that this page as well as page 1 of Exhibit 19 5 was typed by the same typist. 20 Now, directing your attention to page 1 of 21 Exhibit 5, does the word "northeast" appear on that 22 particular page? 23 THE COURT: Yes, it does.

A

25

Yes.

7 8

MR. LANNA: Thank you.

A Now, in addition, your Honor, on the point that I mentioned earlier about page 1 of the two-page document, Exhibit 5, having been -- with an attempt to conserve space on that page despite the fact that there was so much space on the last page, note the inset at the bottom of that page where that takes 8 lines. There is a precise wording inset on page 6 of the 4-page document and if you would compare it, it is word for word and there it takes nine lines.

THE COURT: What is the reason for that?

THE WITNESS: It just is one additional point

in analyzing the whole document that there was an attempt

to conserve space on page 1 of the 2 exhibit page document,

Exhibit 5.

A very significant factor that we found in the examination of these documents was page 5 again when compared with the other pages. And there we found that there appeared to be a different ribbon used on the typewriter.

THE COURT: Page 5?

THE WITNESS: Yes, your Honor, of the 6-page document.

I have the original here.

	683a
1	jwbr 22 Tytell-direct
2	THE COURT: Do you want me to look at the
3	originals?
4	THE WITNESS: Yes, your Honor.
5	THE COURT: Do you want me to look at the originals
6	too so I can see what you point out ehre?
7	THE WITNESS: I was merely going to point out,
8	your Honor, looking at it and having examined it under the
9	microscope with the fine lens provided by the instrument
10	it can be seen that page 5 appears to be more intense in
11	color.
12	THE COURT: You are talking about the typed
13	material?
14	THE WITNESS: The ribbon that was used on the
15	typewriter that prepared those pages.
16	THE COURT: Well, I can't give you any reaction
17	with my naked eye but I will take it that is the conclusion
18	you came to under a microscope.
19	THE WITNESS: You see, your Honor, the typewriter -
20	THE COURT: Would you agree you can't tell that
21	by the naked eye?
22	THE WITNESS: In looking at it it appears

THE COURT: Now that you have come to that con-

23

24

25

to be more intense, but --

clusion, you say that?

THE WITNESS: Yes, but I can tellyou some of the factors that led to that conclusion.

THE COURT: Yes, I would like to hear it.

THE WITNESS: The typewriter that was used to prepare the 6-page document is one that has a fabric ribbon on it as compared with -- and that also was the typewriter that was used to prepare page 1 of the 2-page document, Exhibit 5. But page 2 of the 2-page document, Exhibit 5, was prepared on a typewriter that had what is commonly known as a carbon ribbon or a film ribbon, and so that becomes clearly evidence when you see page 2 of the 2-page document. And if you compare it to page 1 you can see the clear difference there between the two ribbons, one being a film ribbon and one being the fabric ribbon.

THE COURT: Yes.

THE WITNESS: The contrast certainly is not so distinct when you compare page 5 with page 4 because they both are done with the fabric ribbon.

However, fabric does involve particular threads, it does involve the saturation of that fabric with a particular ink that is used to ink the ribbon or the fabric.

THE COURT: Right.

THE WITNESS: And so the intensity of it right

from the ribbon is determined by the amount of the ink in the ribbon, the quality of the ribbon, the way that the ink was spread on the paper and a number of variables that will come into play.

And so an analysis of the particular type or letters under the microscope you will see a difference in what looks like dots. What you actually are seeing are the fibers, are the imprint of the fibers after they are inked onto the paper. And that difference was evidence when comparing page 5 with, for instance, page 4, which I thought would be the best comparison just preceding it, so that the amount of wear could certainly not be appreciable.

THE COURT: I understand. It is very clear.

THE WITNESS: Now, based on all of these findings, your Honor, it appears that page 5 was certainly typed out of sequence because there is a page that follows, page 6 which then reverts back to the previous pages in their machine.

THE COURT: In other words, you believe that

page 6 was typed by the -- was the same ribbon and

in all respects as far as you are able to tell by the same

person on the same machine as page 4 but page 5 was at least

typed with a different ribbon?

THE WITNESS: Yes, your Honor, and would have had to have been done out of sequence.

THE COURT: Or at least it is highly probable that your conclusions up to that point are correct, that it was there. Theoretically some idiot could sit at one typewriter and do page 4 and then come back and do page 6?

THE WITNESS: Except, your Honor, page 5 was done on the same typewriter that page 4 and 6 were done with.

THE COURT: That is correct. I think it is highly unlikely that having gone with you to the point I have gone that I wouldn't go to the next step. After hearing all your testimony I will hear your conclusions on this point.

THE WITNESS: As to Exhibit 5, the fact that that is done out of sequence I think is incontrovertible because

THE COURT: Which one now?

THE WITNESS: Exhibit 3, the two-page where you have the different grades of paper, different typists, different typewriter.

THE COURT: Yes.

THE WITNESS: Well, I cannot be sure that it is a different typist, but surely in one page you have a clear effort to conserve space and then in the following page a clear effort to spread it.

1	jwbr 26 Tytell-direct
2	THE COURT: I see what you mean, yes.
3	Q Are you finished, Mrs. Tytell?
4	A Yes, sir.
5	Q Now, in view of what you told us, Mrs. Tytell,
6	without over-elaborating my question, have you formed any
7	opinion as to the genuineness of these documents?
8	A Yes, I have.
9	
10	And what is your opinion, taking each, Exhibit 5 and Exhibit 6 separately?
11	A That they certainly were not continuously
12	prepared.
13	COURT: Neither one of them?
14	THE WITNESS: Neither one of them.
15	O And is it your testimony that page 1 of
16	Exhibit 5 compares in machinery and also in operator with
17	page 5 of Exhibit 6?
18	A Yes, sir.
19	Q But that page 2 of Exhibit 5 is done by a differ-
20	ent machine totally unrelated to any of the other pages
21	of both exhibits?
22	A Well, totally unrelated to the bulk of all of the
23	pages.
24	Q Right, and on different paper.
25	A Different paper.

25

21

22

somewhere.

THE WITNESS: Yes, your Honor. I am now showing you, your Honor, the two-page document, Exhibit 5 and note the staple holes at the top of those?

THE COURT: Now, I guess we will get an original

A

25

The staple holes referred to on the over, your

Honor, and in the absence of the cover I think the point of disagreement may be that on that cover there were the legs or the crimping of the staple on the back of it and on the last part of it, or the cover itself, the crimping made some indentation on the paper or damaged the paper to some degree thereby creating a very small additional pinhole from the crimping, but there were only two staples on each side of the cover. There may have been additional indentation caused by the crimping or bending of the staple.

page 1 of the 2-page document. That is missing.

THE COURT: And there isn't any center staple hole on page 2 of the document at the present time,

However, there was no center staple as you see on

is there?

THE WITNESS: No, sir.

Q Mrs. Tytell, one final question, in view of your testimony relative to the staple holes, would this in any way change your opinion as to the genuineness of the documents, that is Exhibits 5 and 6?

A No, the staple holes just add to the total irregularity of the preparation of these two groups of documents, but it doesn't in any way alter the physical evidence that is present in the two sets of documents.

Q Your opinion would remain the same then?

THE WITNESS: That's right.

THE COURT: What you are really saying they are intensified by the pin holes to the extent that the pin holes count at all?

THE WITNESS: It is just one additional factor.

THE COURT: All right.

MR. LANNA: I have no further questions.

THE COURT: Yes, I am going to take a ten-

(Recess.)

MR. FAHRINGER: Your Honor, I wonder if you will hear me on an application relative to this testimony that might be important.

THE COURT: Yes.

MR. FAHRINGER: It occurs to me under the doctrine of Brady v. Maryland, if perchance the government had submitted these documents to the FBI laboratory, as was often their custom, or had sought their opinion, or for that matter, your Honor — and I suspect that the possibilities here are limitless — if there had been any interview of the woman who conducted the typing on these documents or the ribbons or typewriters out there, in that instance I certainly think we should be entitled to that and the Court should be entitled to that.

3

4

5 6

7

9 10

11

12

13

14 15

16

17

18

19 20

21

22 23

24

25

THE COURT: Mr. Friedman, do you want to make a comment on that?

MR. FRIEDMAN: Well, first, your Honor, I might state for the record that I am thoroughly familiar with my obligations.

THE COURT: I know you are familiar with your obligations, but I think in this regard as to this point the time to meet those obligations has probably arrived. If it hasn't, I would like to know why it hasn't, and if you agree it has I would like to know if there is anything you have advised me about.

MR. FRIEDMAN: There have beenno oral examinations by the Federal Bureau of Investigation laboratory and there have been no interviews with the typists.

THE COURT: Do you know of anything that would be favorable to the defendant with regard to the question whether or not this warrant or affidavit was altered or substituted pages as contended by the defendant.

MR. FRIEDMAN: I know of nothing favorable to the defendant, your Honor.

MR. LANNA: I don't think Mr. Fahringer was aware of this, your Honor, but after we initiated and submitted our report to the Rockland County Court and that District Attorney's office submitted a copy of it along with I take

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

the documents, an expert retained by Mr. Mc Nally who 2 I believe is sitting here and a copy was sent to the Court, 3 a copy of which I received. This was back in July or 4 August of 1972. I am reasonably certain of that.

I then took it upon myself to advise the District Attorney's office of that count along with Judge Kelly, County Judge, that we were extremely willing to have this submitted. We felt so strongly about it we were willing to have it submitted to an impartial expect, and it was suggested by the prosecutor's office of Rockland that it be submitted to the Internal Revenue Department -- I believe the Alcoholic and Tax Division.

Now, this occurred at least six or seven months ago. I have asked on several occasions, as did Judge Kelly, certainly prior to this indictment here which would move it in effect from the county court, what happened. And as recently as a week ago Friday I spoke to Mr. Vanderlin because I realized this hearing was coming up, who is the Chief Assistant District Attorney of Rockland County and after the third time he infomred me over the telephone that the analysis had been performed and the report was on its way, but I guess it must be by way of Moscow, because I have not received it, I am not aware of it, and I think that is the situation. I think we have

O

1

3

4

5 6

7

8

9

10 11

12

13

14

15 16

17

18 19

20

21

22

23

24

25

done as much as we could to clarify this situation.

THE COURT: If there is going to be another report both sides know of it may be relevant.

I must say my general reaction to the testimony so far today is that although of course the testimony of the experts is of substantial importance in this matter, there are other questions and it is not conclusive. For example, the question as to whether even assuming the defendants' theory is accepted the differences between southeast and northeast would be legally significant or of substance, I just haven't looked at anything at all. There is also the question of what is to be made of the testimony of Mr. Shaw and Mr. Parkhurst and Mr. Politi. And without commenting in any way obviously as to what I conclude about their testimony it will have an effect on the significance of the expert testimony. So don't think at this moment we should be concerned about further study until I have had a chance to sort this all out and decide in my own mind what I think is important on this issue.

But if I do think it is important that I need furtehr testimony called by the Court, let us say, I wouldn't hesitate to go about it.

MR. LANNA: I only mentioned that because I thought your Honor should know.

THE COURT: I am glad to know about it.

MR. LANNA: I assume the government knows.

MR. FRIEDMAN: Your Honor, for the record, to clarify Mr. Lanna's position, if he took a position, my predecessor, Mr. Burke, was asked to obtain another report from the Alcohol and Tobacco Division. He secured another expert and the expert orally confirmed the report, didn't prepare a written report, your Honor, and when I was requested by Mr. Vanderlinde whether a written report would be available, I went back with Mr. Caputo of the Alcohol, Tobacco and Firearms and he said well, he would have to have everything resubmitted to him because he really hadn't kept the materials necessary and therefore, your Honor, I didn't order another written report to be prepared and that is the situation with respect to that.

MR. LANNA: If your Honor please, may I just state for the record with respect to what was just said by Mr. Friedman who said they were aware of this examination, it completely contradicts what the Chief Assistant District Attorney of Rockland County told me. He assures me for the first time that a report was forthcoming from the Alcohol, Tobacco Division of Internal Revenue.

THE COURT: I can't decide. Maybe he was correct

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

jwbr 35

Tytell-

in his impressions, maybe he wasn't. Maybe Mr. Friedman is correct. Igather you didn't get the reports and I don't blame you for being confused and I don't blame you for reporting it to me. Let us see if I can sort all this out and if anything needs to be done you have an opportunity to do it.

Now, I am a little bit concerned about time not in the sense I have to finish today, because I don't, although I prefer to, but we have the cross examination of this witness, we have all the testimony presumably of Mr. Mc Nally and there was some testimony with regard to this question of whether we have a one-family house or a house of different characteristics, and I thought perhaps we should just acknowledge defeat and conclude with this ladies testimony at this time and go on tomorrow. Mr. Friedman looks very pained.

How long do you think this is all going to take.

MR. FRIEDMAN: Your Honor, well -- firstly with respect to our -- I will be relatively short as to my cross examination of this witness. As to Mr. McNally, Mr. McNally cannot come tomorrow. He did come for part --

THE COURT: All right, then we will have to go ahead with it. All right, then, let's go.

MR. FAHRINGER: Your Honor, while you are

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

considering this, I must tell you I have a witness who will only take not more than five minutes. She is going to testify to a two-family house. And she is here and I would hope if I could with your Honor's acquiescence maybe I won't have to be here tomorrow.

THE COURT: All right.

I think it is time foryou, isn't it?

MR. FRIEDMAN: Yes, your Honor.

THE COURT: The jury is still deliberating and I think within the next hour I will have to go down there and see whetherit is possible for them to reach a verdict and that will interrupt this to some extent.

#### CROSS EXAMINATION

#### BY MR. FRIEDMAN:

- Q Now, with respect to page 5 of Exhibit 6, you testified that in your opinion that was done with a different typewriter, is that correct?
  - A No, sir.
  - Q No, sir, or yes, sir?
  - A I said no, sir.
- Q Oh, it was done with different typewriting ribbon, is that correct?
  - A That's correct.
  - Q And how did you reach that conclusion?

A By examining the original page and comparing it with and examining it alongisde of the other pages of the same document.

THE COURT: Mr. Friedman, I am very sorry, but as anticipated I received a note from the jury which indicates some problems and I think rather than get into the testimony it would be better to stop right here because very little has happened and I will be back.

(Recess.)

2

3

4 5

6

7

8

10

11

12

13

14 15

16

17

18

19

20

22

23

24

25

Q With respect to page 5 of Exhibit 6, did you perform a thread count as to that page?

A I did view the ribbon, the typewriting on that page under the microscope under different magnifications and the thread count did appear to be different.

Q What was the thread counton the different pages?

A I did not count specifically the number of threads, but you can see that there is a difference in viewing one alongside the other.

Q What particular differences did you see?

A That the inking appeared to be different as I stated earlier; that it appeared to be more intense and that the stroke was different on the page when compared with pages 4 and 6.

What particular differences did you see with respect to the thread count on page 5 versus the other pages?

A I noticed that the stroke appeared different.

It seemed to be a little bit broader and that could be either a difference in the fabric or it could be a difference in the ink, both are probabilities.

Q Could it also be a difference in the speed at which the page was typed?

A No, sir, this is an electric typewriter and

2

3

4

5

7

8

9

11

12 13

14

15

16

17

18

19

20

22

21

23

25

the impact is automatic.

Q So you are positive that page 5 is -- from your examination are you positive that page 5 was typed with a different typewriter ribbon than page 4?

A I attribute the difference in the appearance, which is perfectly clear, attributing it to the difference in the ribbon.

Q Are you positive that there were different ribbons?

A From the examination of 5 compared with 4 and 6 the difference is clear. I attribute the difference to the difference in the ribbon.

Q What else could the difference be attributed to?

A Well, my identification was that it appeared to be the same typewriter and so therefore again it narrows down to the difference in the ribbon.

Q Are you testifying you are positive that it was a different ribbon?

A From the appearance it is a different writing.

Q A different ribbon?

THE COURT: You seem reluctant to answer the question as to whether you are positive. We all know it is hard to be positive in this world, but I would like to know whether you would use that word or you wouldn't use that word.

THE WITNESS: I am always reluctant to use the word positive, your Honor, but I merely state in the best way I can the difference that I observed.

THE COURT: Let me ask you a question which perhaps you will consider fairer and easier to answer.

In your professional work you must come to conclusions with varying degrees of certainty, is that correct?

THE WITNESS: Yes, your Honor.

THE COURT: What degree of certainty would you say you have with regard to your conclusion as to page 5?

THE WITNESS: It is with an overwhelming degree of certainty, your Honor.

THE COURT: That is a fair answer.

Q Did you actually compare the thread counts of one page, page 5, versus the thread count of other pages?

A I did not count the number of threads. I stated that the difference hat I saw was what is referred to as a difference in the write, write meaning the way the typewriter writes through the ribbon. That write was distinguishable from the other pages that I have testified about.

- Q So you did not make a thread count?
- A I did not have time to.
- You did not have time for a thread count?

A

1

9 10

11 12

13

14 15

16

17 18

19

20 21

22

23

24 25

That is right.

Q Based solely upon your observation of the fact that one ink appeared to be darker than the other ink, you came to the conclusion that this was a different ribbon that was used, is that correct?

MR. LANNA: If your Honor please, I don't believe that is her testimony.

THE COURT: I don't think that is an accurate characterization either because she has mentioned such things as stroke, border stroke and so on.

- Are you a professional typist?
- No, I am not. A
- Have you been trained as a professional Q typist?
- A I know how to type, but I am not a professional typist.
- Q When one is typing at the top of a page --THE COURT: You are not suggesting that a handwriting expert has to be a professional forger, are you?

MR. FRIEDMAN: No, your Honor.

Q Now, with respect to a typist who is typing from dictation versus a typist who is typing from a written document; would you conclude as an expert that the manner

3

1

2

4

5

6

7

8

9

10

11

12

13 14

15

16

17 18

19

20

21

22

23

24

25

in which they might state a particular item on something typed would be different? I will withdraw the question and rephrase it maybe if it is vague.

If one were typing from dictation, might one press a word differently than if one were typing from copy, actually a written copy of something?

A They might.

Q So if one -- if it were dictated to one NY versus the word New York it is possible that as a typist one would write NY rahter than writing out New York depending upon the person who was actually doing the dictating to the typist, is that correct?

A If the dictator was specific and said spell it out.

Q But you cannot tell from these documents whether the particular dictator did say that or didn't say that, is that correct?

A No, sir, I cannot tell what the dictator did only what is on the page such as on page 4 of the six page document, where you see the description of what appears to be the same automobile because it has the same number, which I believe to be a license plate number, and the way that is expressed on the following page, page 5 where --

THE COURT: I understand the difference. I also

eobr

7

8

10

11

14

13

15 16

17

18

19

20

22

21

23

24

understand you don't claim that by looking at these pages you can tell whether somebody dictated one thing or another.

THE WITNESS: No, sir, but only to show that in pages following you see the difference.

THE COURT Right.

- Q Are you familiar with the conditions under which affidavit for search warrants are prepared?
  - A No, I am not.
- Q Are you familiar with the possible time sequences that relate to search warrants or affidavits?
  - A No, sir.

MR. LANNA: Objection, if your Honor please. He is assuming a state of facts not in evidence.

THE COURT What he is asking about her experience,

I don't think that is terribly important.

- Q It is possible -- can you draw conclusions that a person could not have added specific sentences as part of drafting a particular document here?
  - A Would you repeat that, please?
- O Yes. With respect to drafting an affidavit for a search warrant, if someone wished to add a particular sentence relating to that affidavit for a search warrant, if the law required a person to add such sentences or sentences after looking over a prior draft, would you con-

eobr

Tytell-cross

clude from seeing that addition on the affidavit for

4

1

2

3

5

6

7

8

9

10 11

12

13

14

15

16

17

18

A

0

A

0

A

19

20

21

22

23

24

25

0 On either exhibit?

No, sir.

You saw no erasure?

That is correct.

THE COURT: Let me try and shorten this.

I don't understand you to claim that you have found or

believe there are any changes of a particular word on a particular page?

THE WITNESS: That is right.

THE COURT: But only that some pages have been retyped or substituted?

THE WITNESS: That is right, your Honor.

MR. FRIEDMAN: The government just wanted to clarify that for the record. The government has no further questions of this witness.

THE COURT: Are there any other questions of Miss Tytell.

REDIRECT EXAMINATION

BY MR. LANNA:

of the hustle and bustle in typing search warrants and affidavits in law enforcement offices, assuming that he is correct about that. You are not, isn't that so?

A No, I am not.

Q Did you make any inquiry in connection with your examination about receiving from these law enforcement officers comparison type warrants and affidavits so that you could examine same?

A I personally did not make the request, but my husband did because he is the one that made the appointments

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

for Mr. Stuart to come to our office with the documents for examination and did speak with one of the gentlemen whose name I have in my folder, if you would like it, and requested that he supply other similar documents so that we would have a proper comparison and see whether this kind of out of sequence pages are customarily used or whether there is a unique situation.

- Q Was that with a Mr. Damyani, an Assistant District
  Attorney in Rockland County?
  - A Yes, that name is correct.
- Q What was Mr. Damyani's response as far as you know?
  - A He flatly turned him down.

MR. LANNA: I have no further questions.

THE COURT: All right. Thank you very much, Miss Tytell, very interesting testimony.

(Witness excused.

MR. FRIEDMAN: Does the defense have any other witnesses to present as to this particular search?

MR. LANNA: No, not the defendant Anthony Politi.

THE COURT: I hope nobody else does, do they?

MR. LANNA: No, your Honor.

MR. PANZER: No, your Honor.

31'5

eorl

MR. FRIEDMAN: Mr. McNally, please.

JOSEPH P. MCNALLY, called as a witness by the government, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION

### BY MR. FRIEDMAN:

Q Sir, would you please state your name and spell it for the reporter. You have already, I am sorry.

Sir, would you please give the Court some of

your background?

13

A I am an examiner of questioned documents. At present I am a consultant to the New York City Department

of Social Services in the field of document identification.

I am also in private practice.

I started --

THE COURT: What do you do for the Department

of Social Services?

THE WITNESS: I am their handwriting

21

identification expert.

THE COURT: Forged checks and things like

23

22

that?

24

THE WITNESS: Little problems they have

25

over there.

### McNally-direct

THE COURT: I have heard about some of them.

I worked in that particular section. I was

3

1

2

A I began in this particular branch of forensic science back in 1942 as a patrolman in the New York City

5

Police Department, I was assigned to the New York City

6

Police Department Crime Laboratory, specifically the

7

document identification section.

8

trained by other men designated as qualified in the field

9

of questioned document identification. I learned the

11

rudiments of this particular discipline, the examination

12

and comparison of handwriting, the processing of documents

13

for alterations, eradifications and falsification, identifi-

I remained in this particular unit of the

I was a training officer in the New York City

14

cation and comparison of typewriting, anything in effect

15

that had to do with the analysis of documents.

16

police department from 1942 until I was promoted to

17 18

sergeant in 1953. I was designated supervisor of the

19

document section and remained there as a lieutenant until

20

1957. Also remained there until I was made a captain

21

in July of 1965.

22

23 Police Academy until 1967. In 1967 I went back to the

24

crime laboratory as the captain commanding officer of the

25

lab. Remained there until 1970 and from 1970 until I

McNally-direct

3

2

eor3

5

4

6

7 8

9

10 11

12

13

15

14

16

17

18 19

20

21

22 23

24

25

retired in 1972 I was assigned to the district attorney's office in New York County as a document identification expert.

Over all this period of time I remained active in the field of questioned document identification. I have been involved in many, many investigations and examinations and comparisons of questioned documents.

I have testified regarding my findings in these many cases, in the grand juries of the various counties of the City of New York and other counties in the metropolitan area. The grand juries in the federal court system, in the federal courts themselves, the supreme courts of the various counties, surrogates court, family court, civil courts, military court martials and other judicial bodies.

I am a member of several professional societies which deal in questioned document identification.

I am a fellow of the American Academy of Forensic Sciences. I am a member of the American Society of Questioned document Examiners. A member of the International Association for Identification. A member of the American Society for Testing and Materials. A member of the Teaching & Training Division of the International Association of Chiefs of Police.

eor4

# McNally-direct

I am a lecturer on questioned document identification in Rockland County Community College. I am also an instructor in police science on a part-time basis in Rockland County Community College.

I have lectured previously on document identification in the graduate and undergraduate schools of Baruch College, a part of the City University system, and also at John Jay College of Criminal Justice.

I have also been a lecturer for many years when I was a member of the police department in the various in service training courses.

I guess that briefly sums up my experience in this field.

Q Yes, sir.

Now, sir, you have listened to the testimony of Mrs. Tytell, is that correct?

A I have.

Q Do you agree or disagree with the testimony of Mrs. Tytell?

A I agree with the major part of the testimony of Mrs. Tytell with the exception of the conclusions that she arrived at as a result of her original findings.

Q Will you please state in detail what your findings are and how you disagree or agree with Mrs. Tytell?

2

1

3

4

5

6

7 8

9

10

11

12

13

14 15

16

17

18

19

20

21

22

23 24

25

A If I had the documents in my hand maybe I could --

Q Yes. I hand you joint exhibit No. 6 and joint exhibit No. 5. I will also hand you copies of the photographic exhibits that Mrs. Tytell referred to.

A These particular documents , joint exhibit 5 and joint exhibit No. 6, were delivered personally to me by chief assistant district attorney Herman Vanderlinde at the Rockland County District Attorney's office. I believe the date was July 7 of 19 -- if I may refresh my recollection on that, I can specify the date as a matter of fact. I am sorry, July 10 of 1972.

I examined these particular documents in the normal methodology that a questioned document identification expert would use.

THE COURT: Would you say that your examination procedures were substantially the same as Mrs. Tytell's?

THE WITNESS: Pretty much. Low power binocular microscope, the application of grids to determine first of all the type sizes. A comparison of the design, the size of the individual type faces making up the typewriting on these documents against model standards from various manufacturers.

I did not make any photographs of these

McNally-direct

3 and the

7 8

documents to determine watermarks, specifically to find out the watermarks all I did was to hold it up to the light and I could determine the watermarks in that manner.

However, from my examination and comparison of these documents and comparison of the type faces against standards that I have of various manufacturers

I was able to determine that all of the papers on the joint exhibits 5 and 6 emanated from an IBM, from IBM typewriters, the type faces designated as courier, the type space as pica or ten letters to an inch.

In these particular documents, specifically all six pages of joint exhibit No. 6 and the first page of joint exhibit No. 5 were typed on one IBM courier typewriter. That particular typewriter used a fabric ribbon of some composition, nylon, silk or cotton. I am unsure of exactly what the fiber composition was.

another courier 10 IBM and of course naturally IBM just manufactures electric machines. That particular machine used a filmed ribbon, either a polyethylene or a carbon ribbon of some type. That machine was used to type the second page of joint exhibit No. 5 and the last sentence on page 3 of joint exhibit No. 6 starting with the words "On each occasion" and ending with the words "policy"

The paper of exhibit No. 6, pages 1 to 6,

3

1

slips."

4 5

6

8

7

10

11

12

14

15

16

17

18 19

20

21 22

23

24 25 that paper all bore the same watermark indicating the same manufacturer of paper there.

The first page of joint exhibit No. 5 also

bore the same watermark so that we have six pages here emanating from the same manufacturer.

The six pages of joint exhibit No. 6 and the first page of joint Exhibit No. 5. Quite obviously the second page of joint exhibit No. 5, it has a different cast to it. As a matter of fact, under flourescents there is little or no flourescents in the majority of these pages whereas the page, the second page of exhibit No. -- joint exhibit No.5 apparently has a dye of some type in it. It flouresces quite brilliantly. It stands out. The second page of exhibit No. 5 stands out quite a bit.

An examination comparison was made of the staples that were utilized to bind these papers together.

As mentioned previously, when I had these documents there was a blue brief backer, I believe they call it, attached to these particular papers.

The documents with the exception of the second page of joint exhibit No. 5, all of these documents bear

### McNally-direct

the same number of staple holes and specifically there are nine staple holes in most of these documents.

There is a double staple mark and as I mentioned there is an extra stapling on all but the second page of exhibit No. 5.

The staple mark to the left of center on all pages of exhibit No. 6 and the first page of exhibit No. 5, that staple mark coincides in my opinion the six pages of Exhibit No. 6 and the first page of exhibit No. 5 were at one time stapled together.

Examination indicated that the staple marks at the left corner and the right corner of all pages of these exhibits, both pages of Exhibit No. 5 and all six pages of exhibit No. 6, all of these staple marks coincided.

However, when these particular marks on the left and right coincide, I find that there is some aberration insofar as the center staple marks. Actually in my opinion all but the second page of exhibit No. 5 were at one time stapled together with one staple. That is the staple which is slightly to the left of center on all of these pages with the exception of the second page of exhibit No. 5.

Subsequently apparently page 2 of exhibit No. 5 was typed and then all pages of exhibit 5 and 6,

eor9

McNally-direct

including the brief backer, which is not present here, were all stapled together. I find in my actual comparison of these particular documents, except of course where the different typewriter was used on the bottom of page 3 and on the second page of Exhibit No. 5, any indication -- any significant feature that would indicate to me that a different typist was involved in turning out this particular type of work.

I made a specific examination of the document,

Joint Exhibit No. 6, specifically that part of the

document which is designated as No. 5.

THE COURT: Page 5 of Exhibit 6?

THE WITNESS: Page 5 of Exhibit No. 6 and again specifically of the area which contains a description of where the Bobbin Country Club and day camp is.

The fourth paragraph down, the fourth line in about the seventh word. That particular description there "northeast" is in sequence with the typewriting above and below it. There is no erasures of any significance on that particular sheet. It agrees with the rest of the typewriting --

THE COURT: I understand that there is no claim made by the defendants that the word northeast was altered on any particular page. They are talking

1

2

3

4 5

6

7

9

8

10

11 12

13

14

15

16

17

18 19

20

21

22

23

24

25

about whether pages were typed and prepared originally and together in sequence.

THE WITNESS: Specifically that was part of the examination because it was pointed out to me that this particular thing was in question.

THE COURT: I see.

THE WITNESS: In my opinion there is nothing insofar as I am concerned that is suspicious to me. There is no significant changes on these documents with, of course, the exception of the fact that the different machine was used on page 3 and a differnt machine was used for the second sheet.

THE COURT: Can I ask you some questions growing out of Mrs. Tytell's testimony. What is your reaction to her statemnet that the squeezing, I will call it squeezing argument, with regard to pages 5 and 6, that she finds it needs to be explained. Let's put it that way or there is evidence of the fact that the pages were not consecutively prepared, that there is single spacing and as she used the word, in between single and double spacing.

MR. LANNA: Judge, if I may, I think that was page 1 of Exhibit 5.

THE COURT: I meant to say pages 1 and 2.

# McNally-direct

What did I say?

MR. WALL: Pages 5 and 6 of Exhibit 6.

THE COURT: Excuse me, I am all wrong

about that.

I am talking now about Exhibit 5 and I am saying that I recall that Mrs. Tytell used an argument that page 1 of Exhibit 5 was squeezed whereas page 2 was expanded in effect, that the spacing on page 1 was squeezed on occasion. The spacing on page 2 was obviously very open and she took that to be some evidence of the fact that page 2 had probably been changed for a prior page 2, since there was no occasion that the present page 2 was squeezed.

Exhibit No. 5 is concerned, on an entirely different machine to begin with, which would mean that there has to be a transportation someplace along theline from where you are using one machine to another machine, but insofar as page 1 of Exhibit No. 5 is concerned, I can't see any rationale behind anybody trying to squeeze anything in there because there is a tremendous amoutn of space, as you will note, your Honor, at the bottom of that partiuclar page of page 1. There is plenty of space in there without trying to squeeze anything in.

## McNally-direct

THE COURT: On the photographs -- can I see the original?

THE WITNESS: Here is the original, your Honor.

THE COURT: Thank you.

Now, what about her comments as to the difference between the typing of New York abbreviated and New York unabbreviated on various pages?

THE WITNESS: I really don't find any great significance in it because I would say just from it occurring on a few occasions here, I don't think it merits being, say, given a great deal of significance.

THE COURT: All right. Anything else you wish to state with regard to her testimony?

a determination as to whether or not a particular ribbon has been used on a typewriter is an extremely difficult job to begin with because, first of all, on a low stereopticon examination, even with great magnification of the type faces, the ribbon design just does not come out so that you can given an accurate count of it. It spreads. The very nature of the type face hitting against the ribbon has a tendency to spread the ink across the paper so that it is extremely difficult to pick out

eor13

McNally-direct

and to make an accurate thread count.

Generally thread counts are made from the ribbon itself, the thread counts as to the type face.

An identification is made in a variety of other ways that the particular type -- the particular ribbon had been used, but not just on an examination as to the coloration or the spread of the type faces themselves as imprinted on the paper.

There are a whole series of factors that would account for a change in the coloration of the type face. On an electric machine, of course, there is an impression indicator. If you change the speed at which it is going, you have, for instance, a situation where you are making four stencils, you decide I am going to make eight stencils, naturally you have to hit a little harder.

THE COURT: Would that have to do with speed or with force?

THE WITNESS: That has to do with force.

It remains at the same speed, but it does make a difference insofar as the weight of the impression is concerned. That could be changed.

There are so many variables concerned in something like this to make a definite identification

eorl4

McNally-direct

that, say, party A did all of this and party B did the other, it seems to me that in my opinion, anyway,

I would be very hesitant to say that there were two people involved in this or that there was one person involved in it.

what I can say and what is specific insofar as I am concerned is the fact that for the six pages, with the exception of the line on page 3, for those six pages of Exhibit No. 6, the same typewriter was used, the same paper was used, the same format was used.

The typist, whoever it is, and this may be even office policy has a tendency to run way over towards the righthand side. There is very little attention paid to the righthand margin.

It is an inconsistent and this occurs throughout, but specifically would that indicate that only
that particular individual is the only one that does
that. I would hesitate again to positively identify
one specific individual.

What I am saying is that we are using the same machine here, the format to me is consistent throughout. It looks the same throughout. The same paper is used throughout. Again with the exception of the second page of Exhibit No. 5 and the three lines on page

1	eorl5 McNally-direct-cross
2	No. 3 of Exhibit No. 6.
3	THE COURT: Right, thank you. Anything
4	else?
5	MR. FRIEDMAN: No, your Honor.
6	CROSS EXAMINATION
7	BY MR. LANNA:
8	Q Mr. McNally, you say in substance that you
9	agree with Mrs. Tytell as to what she discovered, but
10	you disagree with her as to conclusions, is that
11	correct?
12	A I disagree as to some ofthe findings
13	particularly as regards a different ribbon being used
14	on page 5.
15	Q That is understandable.
16	Now, your report was compiled
17	A On the 31st of July.
18	Q The 31st of July of 1972, at least your
19	written report, is that so?
20	A Right.
21	Q It was directed to the attention of Mr. Herman
22	Vanderlinde who is the chief assistant district attorney
23	in Rockland County?
24	A That is right.
25	Q Incidentally, you knew Mr. Vanderlinde, did

In connection with this? 0 Yes, to see the general format of search A

1	eorl8 McNally-cross	
2	warrants.	
3	Q Oh, really?	
4	A Yes.	
5	Q Would you tell us the names of those warrant	ts
6	that you utilized?	
7	A I did not look at the specific names on the	
8	warrants. I looked at the warrants. Specifically I	
9	examined warrants in the rackets bureau in the New York	
10	County district attorney's office.	
11	Q I am not talking about the rackets bureau,	
12	I am talking about out of the office from which this	
13	warrant emanated.	
14	A I was looking at search warrants in general	
15	As a matter of fact, if my understanding is correct,	
16	it didn't come out of Rockland County, did it?	
17	Q No,	
18	A You asked me if I asked Rockland County.	
19	THE COURT: Let's not quibble. All I am	
20	interested in is what warrants you did compare it with	
21	regardless of whether you were right or wrong.	
22	Q Did you compare this with any warrants out	
23	of Westchester County?	
24	A I did not.	
25	Q Did you make inquiry to compare them with	

warrants from Westchester County?

3

A I did not.

4 5

sidered to be a proper and necessary item in your pro-

6

A Yes, it is.

8

7

Now, did you take -- withdrawn.

9

Did you have occasion to see the type --

Is a comparison study something which is con-

10

Mrs. Tytell's report?

fessional field?

11

A I thought it was Mr. Tytell's report, but I did have an occasion to see areport submitted by the

12 13

Tytells.

report?

14

Q Did you take any notes from that particular

15

16

A I did not.

17

THE COURT: Did you see it before you started

18

your own study?

19

THE WITNESS: I believe I did, yes.

20

Q That report was dated July 25 of 1972, approximately a week before your report was dated?

21 22

A I have a recollection I saw something else or else something else was told to me around the time that

23

I performed that examination.

24

25

In any event, that is the date of the report.

THE WITNESS: I certainly did not.

stand the question? Did you set out for the purpose of

negating the Tytell report?

24

25

P	0	r	2	1

## McNally-cross

2 3

1

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22 23

24

25

Were you limited in any way as to the examination you performed as to time?

> A No.

In other words, when they gave you these documents, unlike Mrs. Tytell, you didn't have to worry about someone saying, look, I have got to get this back, it is quitting time. You were permitted to have these documents, you took them yourself, you examined them as thoroughly as you thought was required and then you returned them, isn't that correct?

I did.

Tell us about your thread count, what was your thread count here?

I didn't make any thread count. As a matter of fact, I said I couldn't make one.

Q I believe you also told us that regarding the difference in connection with page 5 as to the coloration as compared to page 6 of Exhibit 6, I think your explanation to the judge, and correct me if I am wrong, was that possibly the speed was changed and this might have caused a variation, but you concede there was a variation, isn't that so?

I don't concede anything at all. I think I was asked the question or I was commenting about the

1

3

4

5

6

7 8

9

10

11

12

13

14

15 16

17

18

19

20

21 22

23

24

25

testimony of Mrs. Tytell. There is a whole series of factors which could account for, if there is, according to her testimony, a variation. As far as I am concerned there is no variation.

Q But you explained in the event -- did you take a test to see if there was a variation?

A A test in what way? I examined these documents and the examintions I conducted insofar as my examinations were concerned, there was no variation as I testified before.

examination to determine whether the pages were typed at the same time in sequence and so on?

THE WITNESS: That's right.

THE COURT: In that connection did I compare each page of each document with every other page of each document?

THE WITNESS: I did.

Q Nothing in your report indicates that you tested it for variation ?

A I find no significant aberration. I did not go into specific techniques in my report. The report, as a matter of fact, does not go into techniques.

Q Now, that was despite the fact that you had

read such a comment in Mrs. Tytell's report?

3

A I don't recollect reading it.

4 5

Q All right. You examined it but you didn't read it in depth?

6

A I certainly did not.

7

8

Q Mr. McNally, it is your conclusion that page 2 was typed after page 1 and the six pages of the affidavit and those six pages plus page 1 of Exhibit 5 were stapled

9

together. Is that your testimony?

11

I said page 2 was typed after. It could have been typed

A I did not -- I don't think I testified that

12

a week before for that matter. I don't know when page

13 14

2 was typed of Exhibit No. 5. I have no timetable

15

there.

16

17

18

19

20

21

22

23

24

25

Judge Rubenfeld, right?

A Right.

Q It is your testimony that whether typed before

as the control document, was one of the pages signed by

Q In any event, we know page 2, if we can use it

Q It is your testimony that whether typed before or after it certainly wasn't put together with the other pages?

A It was subsequently put together with the other pages.

Q Initially?

## McNally-cross

2

3

4

5

6

7

8

9

10

11 12

13

14

15

16

17

18

19

20

21

22 23

24

25

THE COURT: I thought you said that your conclusion was that initially all pages of Exhibit 6 and page 1 had been stapled togehter.

THE WITNESS: All of them had with the center staple.

THE COURT: And then later on that center staple was removed, page 2 was added for whatever reason and they were all stapled together?

THE WITNESS: And the brief backer and all stapled back togehter again, yes.

THE COURT: I think we are all saying the same thing.

Q As to page 2 of Exhibit 5, it is your testimony that it is different paper than the other sheets?

A Yes.

Q Different typewriter?

A Different typewriter and different type, yes.

Q Different typist?

A I don't know.

Q Do you have your report with you?

A I think I do, yes.

May I refer you to your report, please. May
I direct your attention to the top paragraph of page 5
of your report.

2

1

3

4

5

7

6

8

10

11

12

13

15

16

17

18 19

20

21

23

24

25

MR. LANNA: May we have this marked for identification, if your Honor please.

THE COURT: Yes. Will you use a copy?

MR. LANNA: If you want to use my copy, it doesn't matter.

(Defendant's Exhibit C was marked for identification)

Q Directing your attention now to Defendant's

Exhibit C for identification, defendant Politi's exhibit,

to the top paragraph on page 5, have you read that?

A I have, yes.

Q Does it help refresh your recollection?

A Yes, and it doesn't change my testimony either.

Q Does it in fact state in that paragraph: the aberration noted in page 2 of document 2, --

A Right.

Q I think you will agree what is page 2 of
Exhibit 5 may be logically explained. There is no
question but that it differs from the rest of the
papers involved in documents 1 and 2, referring to
Exhibits 5 and 6. It is a different paper than all the
other sheets. It is typed on a different typewriter
and the format suggests a different typist.

A Suggests.

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	

23

25

McNally-cross

Q I see.

eor26

- A I don't know.
- Q You don't know, okay.
- A That is what I testified to.
- Q But there might have been a different typist, is that what you are saying in your report?
  - A I said I don't know.
- Q I believe you also in this report indicated, again at page 5 of Exhibit C of the defendant Politi for identification, the bulk of these papers are double spaced. Do you have it?
  - A I have it.
- Spacing between paragraphs is sometimes double spaced, sometimes triple spaced, sometimes quadrupled spaced, inconsistent, yes, suspicous, no. Is there anything in there that indicates it was space and a half like on the first page of Exhibit 5?
- A No, there is nothing that indicates that.

  I have it in my notes, though.
- Q You have it in your notes but not in your report?
- A I didn't put in my report. There are a lot of things I didn't put in my report. I had copious notes on this.

4 5

Q That to you -- that to you, there was nothing inconsistent or suspicious --

THE COURT: I think he said it was inconsistent, but not suspicious.

Q That was not suspicious to you?

A No.

The first page of all of the pages, some seven in toto or eight in toto should be crimped.

There is a great number of inconsistencies throughout these pages. Where the first page of Exhibit 5, there should be in that particular place, with the variable line spacer used and say lower down the variable line spacer used, I don't see anything suspicious in that because it certainly wasn't used to squeeze in the type face. You have in the neighborhood of almost two inches of type space at the bottom of the page. So to me it is not suspicious. If you were trying to cramp in the typewriting so you wouldn't wind up off the page, I can see it being suspicious, but to start off with something like that where you are using a variable line spacer, it could very well be accidental. I don't know the reason behind this.

Q How could it be accidental in two different places there where this must be done manually and I assure

3

5

6

7

8

9

10

11

13

14

15

16

17

18 19

20

21 22

23

24

25

you I am not a professional typist, but I know it must be done manually when you get a space and a half.

A It could have been done for some reason by the typist.

Q Anywhere on any of the other seven sheets is there a space and a half?

A I don't believe so.

MR. LANNA: I have no further questions.

If your Honor please, at this time I will offer defendant Anthony Politi's Exhibit C for identification into evidence.

MR. WALL: May I confer with Mr. Lanna for a moment?

THE COURT: Yes.

Do you have any objection?

MR. FRIEDMAN: I certainly have no objection, your Honor.

THE COURT: That is the question. I know what you are saying to yourself. I don't know what he is trying to do, but I have no objection.

MR. FRIEDMAN: Yes, your Honor.

(Defendant's Exhibit C was received in evidence)

MR. LANNA: May I be permitted to ask an

1

3

4

5

6

7

8

10

11 12

13

14

15

16

17

18

19

21

22

23

25

THE COURT: Are you sure it is just one?

MR. LANNA: I will try to keep it as close

to one as possible.

additional question.

BY MR. LANNA:

Q Getting back to the first page of Exhibit 5, you tell us that there was no crimping or rather, if there was crimping, it certainly had nothing to do with the space remaining because we could have run right down onto the top of it, right?

A It seems to me there is plenty of apace.

THE COURT: Not that it could run right down to the bottom, but there was enough space there to do more typing without it appearing odd. Would that be the way you would put it?

A That would be, yes.

Q Mr. McNally, assuming arguendo that that second page of Exhibit 5 had been done sometime prior thereto --

A I don't understand the Latin phrase.

Assuming, forget the arguendo, assuming that that second page had already been done and further assuming that the first page, of course, had to be redone so as to fit into the second page, then, of course, we would have to get everything onto that first page, would

1 eor30 McNally-cross 2 we not? 3 It would be very easy to do without A 4 crimping. 5 Really? 6 A Sure. 7 Then we would run down a little here? 8 A No, you just figure out your line spacing. 9 Any typist can figure that out. The number of words 10 you have to type figured out by how many words you have 11 on a line, it is very simple. A typist does it all the 12 time. 13 Q I know that. 14 That is what a good typist can do. 15 Q A good typist could have done it? 16 THE COURT: I don't think you need his opinion 17 on this. You can argue this point. 18 MR. LANNA: Let me make one point, if I may. 19 As Mrs. Tytell illustrated, we saved one 20 line in our drawn in margin paragraph at the very bottom 21 of that page. Do you recall I am speaking now of page 22 1? 23 A Yes. 24 That is in eight lines rather than in the usual 25

nine which we find on page 6 of Exhibit 6, okay?

3

4

5

6

9

10

11 12

13

14

15

16

17

18

19

20 21

22

23

24

25

THE COURT: You mean the usual nine, the other one is nine

MR. LANNA: Very well.

- We save a couple oflines by manually operating the spacer, isn't that correct?
  - A half a line?
  - 0 Yes.

THE COURT: Two halves.

Two half lines. There is a lot more below A that. If you want to save space, move that over to the left.

THE COURT: I don't think there is anything profitable in this discussion.

MR. LANNA: I have no further questions.

MR. WALL: I have a few questions, your

CROSS-EXAMINATION

BY MR. WALL:

Honor.

O Mr. McNally, I believe I heard you say that you would hesitate because of the difficulties involved in making the assertion that Mrs. Tytell made, to wit, that a different ribbon was used with respect to page 5 of Government's Exhibit 6 than wasused to type the other five pages. Is that the gist of your testimony?

## McNally-cross

2

1

3 4

5

6

7

8

9

10

11

12

13

14

15 16

17

18

19

20

21

22

23

24

25

That's right, yes.

In other words, sir, what you are saying is that becuase of the difficulties involved and the possible explanations, some of which you gave to the Court, you are not willing to make a statement that there is any difference?

From my research into this particular problem, it is virtually impossible to do. Not only willing, but nobody else has done it.

Did you make an effort to determine whether or not the same ribbon was used with respect to page 5 as had been used with respect to the other pages?

A I made an effort. I compared the ribbons on all of these particular documents. I was unable to get a thread count out of any of them and, as a matter of fact, that is one of the first steps. The thread count has to match exactly if you are dealing with the same ribbon.

In these particular cases here there is no way you can get it out because microscopic examination there, there is no definition of the thread count on the paper so it can't be done.

> Is that the only -- excuse me, withdrawn. I had understood Mrs. Tytell to say she made

eor33

2

3

4 5

6

8

7

10

9

11

13

14 15

16

17

18

20

22

21

23

24

25

McNally-cross

no thread count. Is that the only way that a determination can be made as to the different ribbon is by thread count?

- A Generally that is the way that it is done.
- Q Can you tell me what type of equipment you used in examining page 5 as opposed to the other pages?
  - A I used a low power microscope.
  - Q What do you mean by a low power microscope?
- A It is a microscope that magnification at the most is somewhere in the neighborhood, the one I have anyway, is 60 times normal size. I step it down to in this particular case about 30 times normal size, the bigger the magnification the narrower the field, of course.

I was unable to ascertain on any of these particular pages, that is the original documents, any specific area where I could using a thread counter make a threat count.

- Q Is it your testimony, then, that the power used ranged, as you tested it, between 60 and 30?
  - A 30 was the type that I used, yes.
- Q I think I misunderstood you. In making this kind of determination is it better to have lower power or higher power?
  - A If you are looking for it, you have to have

eor34

McNally-cross

3

2

4

5

6 7

8

0

10

11 12

13

14

15

16

17

18

19

20

21 22

23

24

25

actually the minimum power for something like this would be at least ten times normal size. I couldn't see it on ten times normal size. I jacked it up to see if I could see it. I still couldn't make any -- I couldn't get out any definition, I will put it that way.

Would you have less hesitation in making the assertion that Mrs. Tytell made had you had equipment ranging in power from ten to 100 and had done the variations all the way through?

It is not there. If I raise it to 10,000 it is not there. Then I would be looking at holes in the paper.

Will you tell me whether or not the ribbon used in the typewriter that was employed on Government Exhibit 6 is the type that goes to the end and then returns? In other words, you keep typing over? Do I make myself clear?

It is a fabric ribbon, yes.

When it hits the end it reverses itself and the type goes over what has already been struck earlier, am I correct?

> Yes, sir. A

Did you come to any conclusion as to whether or not on any of the pages on Government Exhibit 6 the

2

3

4

5

6

7

9

10

11

12

13

14

15

16

17 18

19

20

21

22

23

24

25

ribbon had about run out of ink or was close to running out of ink?

I did not.

Finally, I believe that you gave to the Court an explanation for a possible difference and that is that if a typist decides to get additional copies, he must have a greater force and he adjusts, I take it it is a button on the machine.

It is a gauge on the lafthand side of the IBM.

Then the keys strike the ribbon and the paper with greater force?

They do, yes.

That could account for any difference in color?

That is one of the variables. It depends, if you have backing behind it, depending upon the backing. behind it. There are a whole series of factors involved in impressions which have to be taken into account and since I don't know those factors, I can't be specific about them.

In your experience it would be rather unusual for a typist to get extra copies of but a single page of a multi-page document? In other words, it would be out

1	eor 36 McNally-cross-redirect
2	of the ordinary, would it not, to make six copies of five
3	of the pages and then press the gauge so as to get ten or
4	twelve copies of just a single page in the same document?
5	A I don't know what you are talking about at this
6	particular stage. I just mentioned that as one of the
7	factors involved in the change of impressions.
8	MR. WALL: I have no further questions.
9	THE COURT: Gentlemen, I have about 15
10	minutes more and then I won't be able to stay.
11	MR. FAHRINGER: Could I, your Honor?
12	THE COURT: I don't want to pressure anybody
13	unfairly, but that is a fact. I know you want to get
14	back to out of town. I know Mr. McNally would like to
15	finish and have we finished with Mr. McNally?
16	MR. FAHRINGER: I have no questions of Mr.
17	McNally.
18	MR. FRIEDMAN: I just have two.
19	REDIRECT EXAMINATION
20	BY MR. FRIEDMAN:
21	Q Did you note any variance in color between
22	page 5 of Exhibit 6 and the other pages of Exhibit 6?
23	A No.
24	Q Additionally, what search warrants did you
25	actually examine with respect to making this comparison

eor37

McNally-redirect

here? Not the specific names, but approximately how many you did look at?

A I looked at a whole series of search warrants in New York County to see the format utilized by the typists insofar particularly as to the following of the righthand margin, which happened to stick in my craw because it was so erratic.

Q Did you find significant differences between the documents that you compared and the documents that you were looking at?

A No, apparently it seems that all or at least the typists in New York follow that same format. They let that righthand margin ride pretty free. It is sort of sloppy. It is not defined.

MR. FRIEDMAN: No further questions, your Honor.

THE COURT: Thank you.

(Witness excused)

MR. FAHRINGER: Your Honor, I have prepared a stipulation that Mr. Friedman talked about and it will take us 30 seconds.

MR. LANNA: If your Honor please, I had a few questions.

THE COURT: All right, Mr. McNally, you will

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## McNally-recross

have to come back.

JOSEPH P. M c N A L L Y resumes.

RECROSS EXAMINATION

BY MR. LANNA:

Q Mr. McNally, was it your testimony that you can't get a ribbon count from the typewritten document?

A I could not get a ribbon count from these typewritten documents, no.

O I didn't ask you that. Is it your testimony that you cannot get a ribbon count from the typewritten document?

THE COURT: I don't understand your question. Do you mean that it is impossible to get a ribbon count from any document under any circumstances?

MR. LANNA: No, sir. It was my understanding that when he testified, it was brought to my attention, that he couldn't get a ribbon count from these documents because it wasn't possible.

THE COURT: I understood him to say it wasn't possible in his opinion to get one from these documents.

- That's right, sir. A
- But you are not telling this Court that you

3

4 5

6

7

8

9 10

11

12

13

14 15

16

17

18 19

20

21 22

23 24

25

can't get a ribbon count from typed documents?

No, I have photographs of ribbon counts. In this particular case you can't get a ribbon count on them. They are spread too much. There is no definition.

- That was your analysis in this case?
- In this case, yes.
- But you didn't put it in your report, did you?
- I did not. A
- Despite the fact that there was such a remark in the report of Mr. and Mrs. Tytell?
- A I didn't catch the remark in the report. I saw it as I say in the space of about one minute.
- If I may, just a few additional items. I really do promise at this time, Judge.

Mr.McNally, you say you have been in this business for some 20 or 30 years, is that correct?

- 30 years.
- And certainly you have read most of the texts and the authors and the experts in this field, have you not?
  - A lot of them.
- Don't you agree, sir, that the experts almost without exception, if not without exception, state it is important in -- it is extremely important that a

747a

MR. LANNA: I thought you might wish to refer

25

.

THE COURT: I may.

Do we have a stipulation?

MR. FAHRINGER: Yes, I think so, your Honor.

THE COURT: Gentlemen, can we move along on

something?

in.

eor41

to them.

If there is one stipulation, let's get that

MR. FAHRINGER: It is stipulated, if it please your Honor, it is stipulated between the government and the defendant Michael Roman that since 1959, 77 Broadway, Park Ridge, New Jersey was a two-family dwelling and was a two-family dwelling and was so registered with the building inspector's office of Park Ridge, New Jersey.

The two apartments are unconnected by any entrance and have completely separate entrances, units, telephones, heating systems and mailboxes.

The upper apartment was occupied by a Mr.

Frank Serrebono and his wife and one child. During the last part of May Mrs.Muriel Demarest, the mother-in-law of Michael Roman, the owner of 77 Broadway, Park Ridge, New Jersey, moved into the upper apartment and occupies it today.

2

3

4

5

6

7

8

9

10

11

13

14

15

16

17

18

19

20

21

22

23

24

When Mrs. Demarest moved into the upper apartment, the telephone and utilities were still listed in the name of Frank Sarrebono.

There should be one correction. That should not be mother-in-law of Michael Roman, your Honor, it should be the mother of Miss Jean Bujese.

THE COURT: Quasi mother-in-law, I take it? May I ask you, Mr. Fahringer, to have prepared for me a typed copy of that stipulation.

MR. FAHRINGER: I will be happy to do that. THE COURT: Are you set on the other one, gentlemen?

MR. BELLANTONI: This is with respect to 15 Eastview Avenue, Yonkers, New York, your Honor. The premises are a legal two-family residence registered with the muncipal authorities as a legal two-family residence. The building contains two separate apartments connected by a common entrance, no other connection.

Both apartments have separate kitchens, separate mailboxes, separate utilities.

The premises are owned by Donna Cuzzo.

Mr. and Mrs. Cuzzo reside on the second floor. Mr. and Mrs. Hlawatsch reside on the first floor.

Mr. and Mrs. Hlawatsch are related to

25

eor43

Mrs. Cuzzo. Mr. Hlawatsch is Mrs. Cuzzo's stepfather.

THE COURT: All right.

The only questions I have, gentlemen, are that I didn't notice in either of those stipulations and certainly in the second anything except the use of the present tense and I assume that the relevance of these stipulations or the facts with regard to which these stipulations are given would be as of a certain date.

MR. FAHRINGER: I said, Judge, since 1959 and that covers June 2nd.

THE COURT: I don't think the second stipulation indicates a period of time.

MR. BELLANTONI: For 50 years it has been a two-family residence.

There is one more factor. Mrs. Cuzzo
lived there until April of 1969. From April of 1969
until June of 1972 the second floor apartment was
occupied by a tenant. Mr. & Mrs. Cuzzo moved into the
second floor apartment in June of 1972.

THE COURT: Mr. Friedman -- Mr. Fahreinger, are you concluded?

MR. FAHRINGER: Mr. Friedman has agreed I think to stipulate with me that he would indicate to the Court which informer supplied the information directly to

eor44

,

4 5

the affiant. That relates to one argument I made to the Court and if that is acceptable to your Honor, that is acceptable to me and he also indicated he would give us a stipulation as to what surveillances the affiant made.

That is all I need to make my legal arguments.

MR. FRIEDMAN: No. In the first place, with respect to the 15 Eastview stipulation, I have now been informed of facts which lead me to the conclusion that at this instant I don't wish to enter into the exact stipulation which has been presented to your Honor and, therefore, I do not wish to do so.

THE COURT: We are both here in New York and
I will ask you to get together and see if you can stipulate
completely and if there are some minor loose ends you
can't stipulate about, some day we will call a witness
for ten minutes.

What about Mr. Fahringer?

MR. FRIEDMAN: With respect to Mr. Fahringer,

I did say that we would stipulate as to which informant

in the federal affidavits Agent Reutter had specifically

spoken to.

Additionally as to the others, the government would stipulate that Mr. Reutter submitted questions to

eor45

another FBI agent. The FBI agent asked the informant and then Mr. Reutter received the information back and Mr. Reutter did not know the precise identity of theother informant.

THE COURT: In other words, you are willing to name a number of people involved, but not the names?

MR. FRIEDMAN: Not the names.

THE COURT: Is that your point?

MR. FRIEDMAN: With respect to the surveillances
I did not tell Mr. Fahringer that I would specifically
stipulate every single surveillance that Mr. Reutter
participated in. I said Mr. Reutter had participated
in most of the surveillances, but I didnot say I would
so stipulate.

MR. FAHRINGER: I stand corrected. I think, your Honor, that will be satisfactory, just the number of the informer information.

THE COURT: Very well. I ask Mr. Friedman to do that.

Gentlemen, I have to leave at this moment except that I want to ask and I assume, at least defense counsel would want the opportunity to try and wrap up their positions on this situation in the light of the testimony and I don't urge that you submit very long

1	eor46
2	memoranda, but I do urge that each of you deal with your
3	own clients only and let me know what you think has been
4	proven or not proven as a result of these hearings.
5	MR. FRIEDMAN: Your Honor, I am sorry, is
6	there a possibility of having some additional hearing
7	tomorrow? I have Mr. McKenna who will testify that he
8	drafted the warrant.
9	MR. LANNA: It affects three people, sir.
0	MR. FRIEDMAN: I also intend to put on
1	evidence
2	THE COURT: I am a little confused. I
13	thought all day long we were trying to get finished by
14	night and now I am met by an indication like this. I
15	told you he can go on tomorrow, yes.
16	MR. FAHRINGER: In terms of myself, your
17	Honor, I would be prepared to trust other counsel.
18	THE COURT: How long is the rest of this
19	going to take?
20	MR.FRIEDMAN: I do not think it will take,
21	your Honor, longer than one hour.
22	THE COURT: Let's resume at 10:30 tomorrow.

24

23

MR. LANNA: May we make it at 11?

11.

THE COURT:

MR. LEIGHTON: Can Mr. Panzer stand in

for me tomorrow morning?

THE COURT: Any one of you can stand in for the rest of you if you are willing to trust each other.

MR. LEIGHTON: Thank you, your Honor.

THE COURT: All right.

(Adjourned at 5:50 p.m.)

5 fls.	1
Berry	2
oliti	3
	4

UNITED STATES OF AMERICA

eowh

vs.

73 Cr. 56

ANTHONY POLITI, et al.,

Defendants.

6

5

7

New York, April 4, 1973 11:00 a.m.

9

8

(Hearing resumed.)

10

THE COURT: Good morning, gentlemen.

11

MR. FRIEDMAN: Your Honor, the government calls

12

Mr. William McKenna to the stand.

XX

WILLIAM MCKENNA, called as a witness by

14

13

the government, having been first duly sworn,

15

testified as follows:

16

DIRECT EXAMINATION

17

BY MR. FRIEDMAN:

Rackets Bureau.

18

Q Sir, will you please state what your occupation

19

is?

20

A I am a member of the Bar of the State of New

21

22

York. I am an administrative assistant to the District

23

Attorney of the County of Westchester, and chief of the

20

Q How long have you held that position?

24 25

A I have been with the District Attorney's office

24

25

eowh 2

# McKenna-direct

for approximately 13 years. I am sorry, 11 years.

- Sir, I hand you Joint Exhibits 5 and 6, and I ask you to look at them, please, and I ask you to identify them, if you can.
- This is an affidavit and a search warrant that I prepared in January of 1971.
- You personally prepared that affidavit and search warrant?
  - I did. A
  - Did you dictate that to your secretary?
- It was dictated to secretaries in the District Attorney's office in Westchester County, White Plains.

THE COURT: Mr. McKenna, will you tell us what you mean by you prepared it?

THE WITNESS: Using the investigative surveillance reports and an interview with the investigators involved, I prepared a tentative draft combination data sheet.

THE COURT: You mean you wrote it out or you dictated it or what?

THE WITNESS: I dictated that.

THE COURT: You dictated a draft of the affidavit?

THE WITNESS: That is correct, your Honor.

THE COURT: Right.

THE WITNESS: And from that on the 26th of January

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

eowh 3

McKenna-direct

I dictated the warrant and the affidavit.

THE COURT: I see. So you did dictate those two documents?

THE WITNESS: Yes, your Honor.

Now, sir, could you please tell the Court how the description on there was arrived at?

Well, I believe the warrant was executed on January 26, which was a Tuesday. For all intents and purposes, the investigation had concluded the previous Friday and the investigators came to me to have the warrant and affidavit prepared and at that point, I wasnot satisfied with the description of the target premises.

THE COURT: Right.

THE WITNESS: I directed them to get either a street address or some further identification. I suggested a meets and bounds description perhaps from a survey that they could obtain in the Rockland County Landlord's Office, and they came back to me and informed me they were unable to do that.

Either late Friday afternoon or on Monday morning, I had one of the investigators draw a map of the area and I asked the investigator what the direction north was and on this sketch that had been drawn, I put an arrow pointing north.

3

5

6

7

8

9

10

**xx** 11

12

13

15

16

17

18

19

20

21

22

23

24

25

please?

I fixed the description of the cottage as being in the extreme northeast corner and that was the description that was used in my draft and the description that was used in the affidavit and the warrant that was prepared on Tuesday, I believe it was.

- Q Sir, do you have your draft with you?
- A Yes, I do.

MR. FRIEDMAN: I would ask that this be marked Government's Exhibit 7.

(Government's Exhibit 7 was marked for identification.)

MR. FRIEDMAN: Thank you.

- Q Exhibit No. 7 marked for identification, is that the draft from which you prepared the original affidavit and search warrant?
  - A That is correct.

MR. FRIEDMAN: Your Honor, I would ask that the exhibit marked for identification, number 7, be admitted into evidence.

MR. LANNA: May I examine it?

THE COURT: Show it to Mr. Lanna.

(Pause.)

MR. LANNA: May I make inquiry, if your Honor

THE COURT: Yes.

THE COURT: 1es

VOIR DIRE EXAMINATION

BY MR. LANNA:

Q Mr. McKenna, when you say this is a draft, isn't it more accurate to say that this was just a running log of what was given to you by various investigators, isn't that so?

A Well, yes and no. The latter part has more proceeds in it than would the very beginning, which was merely the extrapolation of raw data from the report.

Q Isn't this a log of what was given to you by investigators?

- A I went through --
- Q A running commentary?

attempted to dictate a search warrant from their reports,
which consisted of over a hundred pages, and I found it was
impossible to do. So I continued with the secretary and
merely took out of the report those portions that I thought
would be probative and the probable cause issue for the search
warrant.

Now, when I got up to the period roughly about Tuesday, which would have been the 20th or the 21st of the previous week, the reports, I don't think, had been prepared

XX

## McKenna-direct

at that time so I sat down with the investigators, who had conducted the surveillances, and the last two or three pages of that are the results of the interview I had with them.

- Q Mr. McKenna, this is not a draft of your affidavit or your warrant in this case, is it?
  - A No, it is not.
  - Q A draft as we understand it?
  - A No, it is not.

MR. LANNA: I would object on the grounds, first, that it is not a draft and, secondly, it is self-serving.

THE COURT: The objection is overruled. It
doesn't seem to me that it has to be a draft in order to be
admissible. I gather it is the major document which formed
the background for the final dictation of Joint Exhibits 5 and
6, and to the extent it may be illuminating in that regard,
I think it is properly admitted in evidence.

(Government's Exhibit 7 was received in evidence.)

#### BY MR. FRIEDMAN:

- Q Sir, would you please point out on Government's Exhibit 7 the page on which the description of the location appears?
- A I think I may have missed it, but I notice the first on page 7.
  - Q Will you please read the asscription on page 7,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

THE COURT: You mean it may be in more than one

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

please?

place? 4

> THE WITNESS: It may have been before that, Judge. I am not positive. I am lookin g at it very quickly.

I am quoting from the top of page 7 of Government's Exhibit 7. "Upon Phil Politi exiting the vehicle, Investigator Staton observed Phil Politi exit his vehicle, placing a brown paper bag under his left arm.

"Subject proceeded in westerly direction to the extreme west end of the second house on the north side of the road, made a sharp right turn through the fence and proceeded in a northeasterly direction past the pool area.

"CCI, J. J. Keating and Investigator Parkhurst observed Phil Politi pass the pool are and continued in northeasterly direction to a cottage located in the extreme northeast corner of the bungalo colony bound by a chain-link fence on the north and east side of the bungalo.

"Prior to Phil Politi entering this dwelling, three loud and distinct knocks were heard."

THE COURT: That is enough.

THE WITNESS: It appears elsewhere on that page and I believe on the last page also.

This document was prepared prior to January 26, 1971, is that correct?

2

3

4

5

6

7

8

9

10

11

12

13 14

15

16

17

18

19

20 21

22

23

24

25

That is correct. A

Sir, at one time, were you a surveyor or did you have an occupation along those lines?

- A Yes, sir, I did.
- Q what was your occupation?
- A Surveyor and draftsman.
- 0 When was that, sir?
- A 1954 and 1955.
- Now, sir, can you tell me at any time, was the description given to you that of the southeast corner?
  - Never.
- At any time, did you prepare any document with respect to a search of a Bobin Inn Motel cottage in this case that contained southeast corner on it?
  - A Never.
- Have you ever seen any search warrant or affidavit in support of search warrant with respect to the search of the Bobin Inn Motel in this case that contained thereon a description which described the premises as being located in the southeast corner?
  - No. A
- Now, sir, on the night of January 26, 1971, were you present at a state police barracks?
  - Yes, I was. A

2				
2				

Where is that barracks located?

3

1

was Stoney Point.

4

5

6

7

9

10

11

12

13 14

15

16

17 18

19

20

XX 21

> 22 23

> > 24

25

It was in Rockland County. I believe it was Spring Valley. I am not positive. It is where the defendant --

THE COURT: I think it was testified yesterday it

THE WITNESS: I am sorry, Stoney Point. That is correct.

- Did you see Mr. Anthony Politi there? 0
- Yes, I did. A
- Did you have a conversation with him?
- I did not.

MR. FRIEDMAN: Sir, I would ask leave of the court to pose that additional question which was raised yesterday.

THE COURT: Go right ahead.

Q Sir, did Mr. Anthony Politi ask you for a copy of the search warrant and did you tell him to go fuck himself?

A I did not.

MR. FRIEDMAN: No further questions, your Honor.

THE COURT: Mr. Lanna.

# CROSS EXAMINATION

### BY MR. LANNA:

Q Mr. McKenna, to your knowledge, was Mr. Anthony Politi or any of the defendants in that raid given a copy of the search warrant?

evidence, to wit, that there is a misdescription in any search

MR. FRIEDMAN: I object to assuming a fact not in

hattan?

23

24

25

A I have never spoken with him.

24

25

1	eowh 12 McKenna-cross	371	766a
1	eowh 12 McKenna-cross		
2	Q Never in your life?		
3	A Never in my life.		
4	MR. LANNA: I have no further que	estions.	
5	THE COURT: Thank you very much,	Mr. McKenn	a.
6	(Witness excused.)		
7	MR. FRIEDMAN: Steve Barnett, if	your Honor	please.
8	This will be testimony as to the	actual phy	sical
9	location of 77 Broadway, your Honor, in Park	k Ridge, Ne	w Jersey.
10	THE COURT: Which defendant does	that relat	e to?
11	MR. FRIEDMAN: Michael Roman, you	ur Honor.	There
12	will also be one additional matter which will	ll be made	clear
13	in a moment.		
14	STEPHEN S. BARNETT, called	d as a witn	ess
15	by the government, having been first of	duly sworm,	
16	testified as follows:		
17	DIRECT EXAMINATION		
18	BY MR. FRIEDMAN:		
19	Q Sir, what is your occupation, ple	ease?	
20	A I am a special agent with the Fed	deral Burea	u of

xx

21

22

23

24

25

A I am a special agent with the Federal Bureau of Investigation currently assigned to the Cincinnati office.

How long have you had that occupation?

For a little over three years, three and a quarter years.

Were you assigned in New York prior to this? Q

- A Yes, sir, I was.
- Q When were you assigned to New York?
- A From the first part of 1971 up until December of 1972.
- Q Now, sir, were you in the hall yesterday after the -- immediately after the morning recess?
  - A Yes, sir, I was.
- Q Did you observe Mr. Anthony Politi come out of the courtroom?
  - A Yes, sir, I did.
  - Q what, if anything, did you hear him say?
- A Well, it was approximately twenty minutes to one at the time of the lunch break, and I came out of the witness room and walked into the lobby and I was standing approximately 18 feet from the door where you exit the court-room on the sixth floor and Mr. Politi came out and just as he stepped out the door, he was laughing, he had a big smile on his face, and gestured like this (indicating) and he said, I should have got an Academy Award, exactly like that, and he addressed it to a group of people standing immediately in front of him and these four people were Bobby Peters, Donna Cuzzo, Phil Politi and Mike Roman.
- Q Now, sir, moving to 77 Broadway, did you have occasion to conduct a search of 77 Broadway in Park Ridge,

  New Jersey?

:7

2

1

3

4

5

6

7

8

9

10

11

13

14

15

16

17

18

19

20

21

22

23

24

25

- A Yes, sir, I did.
- Q Do you know approximately what size area Park Ridge, New Jersey is, what size town?
  - A Yes, sir, it is less than ten thousand.
- Q Will you please describe 77 Broadway in Park Ridge,
  New Jersey, what it looks like from the outside?

A Yes, sir. It is a rather large residential home. It has one front porch, a large front porch covered with a roof over it. It has one set of steps leading up to the porch and has a single entrance at the front of the home.

It has a drive to the left as you are facing the home. It has a back entrance with a small covering over the back door and it is located in the middle of the yard.

It has a yard around it and is located in a residential area.

- Q Is it a townhouse or did it appear from the outside to be what kind of a dwelling?
- A It appeared to me to be a one-family dwelling.

  It was not a duplex, it was not a garden type of apartment or any other type of apartment and there were no apartments immediately adjacent to it.
- Q In your experience as an agent of the Federal Bureau of Investigation have -- withdraw the question.

Sir, did you check with local -- the local registrar

to determine whether or not this dwelling place was a one-

3 family or two-family dwelling place?

- A No, sir, I did not.
- Q Sir, why didn't you do that?

A Because from my experience in gambling operations, in particular policy gambling operations, oftentimes when inquiries are made concerning residences and homes --

McKenna-cross

MR. LANNA: I am going to object. I think this is self-serving and completely improper at this time.

THE COURT: I think the reasons for his not doing so may be relevant. I admit they must be self-serving, but that doesn't mean they may not be truthful. I will hear them.

I am not sure that the reasons are vital either, but I will hear it.

A In a gambling type operation, particularly policy, it is extremely difficult to locate policy banks where the gambling for the day or bets for the day are being tallied or the records kept. It is very difficult to locate these places through surveillances. Once located, experience has shown that if inquries are made concerning the residences or made of people living in the area that these people often know persons in the policy operation or in the residence about which you are inquiring and as a result, the policy bank

3

4

5

6

8

9

10

11

13

14

15

16

17

18 19

20

21

22

24

25

will be moved immediately and as a consequence --

THE COURT: To put it briefly, would it be fair to say that you didn't make an inquiry because you were afraid if you made inquiry it might leak?

THE WITNESS: Yes, sir, that is exactly it.

- Q Now, sir, you entered 77 Broadway with a search warrant, is that correct?
  - A Yes, sir.
  - Q Where did you enter?
  - A I entered at the rear door.
- Q Is that where agents had seen Michael Roman enter before?
- A Yes, sir, agents had. That is the only door he had ever entered.
- Q Now, sir, with respect to -- you entered there and what did you find when you entered?
- A Upon entering I circled through the kitchen into the bedroom and I saw Michael Roman standing beside a desk which had lots of papers on it. There was a suitcase next to the desk with numerous amounts of paper. A lady known as Jean Bujese was sitting on the bed with money and papers spread around her on the bed.
- Q Now, sir, to your knowledge of the investigation, had agents of the FBI seen any other occupant going in and out

#### McKenna-cross

of that apartment other than Jean Bujese?

A Yes, sir. In conversation with other agents, Jean Bujese had been seen by at least one agent in the vicinity of the home or in the yard around the home and I understand possibly entering the home. Children had also been seen playing in the yard.

Other than this, no one else was observed at that residence other than Michael Roman.

Now, sir, upon entering, did you find that the residence had another apartment upstairs, sir?

A No, sir, I did not find that. I limited my search to the bedroom only and did not make any search of any of the remaining part of the house, although I understand from conversation with other agents that there was an entrance that had been sealed off to the upstairs.

- Q Do you know if any other agents went upstairs and searched upstairs, sir?
  - A To my knowledge, no other agents went upstairs.
- Q Have you asked the other agents whether they did go upstairs?
- A Yes, sir, I have talked with those involved in it.

MR. LANNA: I think we have gotten to the point where the leading and the hearsay is sort of becoming redun-

dant at this time.

2

1

.

5

6

8

10

11

12

13

15

14

16

17

18

19 20

21

22

23

24 25 THE COURT: Sustained.

MR. FRIEDMAN: Your Honor, if Mr. Lanna wishes,

I can produce all the agents that participated --

THE COURT: All the evidence so far is that the only search made was of the lower floor. If somebody wishes to contest that, they can bring another witness so you can rebute it, but there is no need to get hearsay in here.

Q Do you know who the occupant of the upstairs was, sir?

A According to Miss Bujese, it was her parents, who were away.

THE COURT: She told you that?

THE WITNESS: Yes, sir, she told agents in the room, I overheard her talking to agents in the room that her family lived upstairs and she wanted -- she could have left her children with them if they had been there, but they were not.

THE COURT: When did this statement on her part take place?

THE WITNESS: It was during the search. I am not exactly sure of the time.

THE COURT: All right. I don't know if I have the date of the search, do you recall?

1	eowh 19 McKenna-cross 378 773a
2	THE WITNESS: June 2, 1972.
3	MR. FRIEDMAN: No further questions, your Honor.
4	MR. LANNA: If your Honor please, I am going to
5	pinch hit for Mr. Fahringer this morning. I didn't realize
6	this was taking place.
7	MR. FRIEDMAN: Excuse me, your Honor, just for the
8	record, I did tell Mr. Fahringer about this witness.
9	MR. LANNA: I have no objection to it.
10	Isn't it a f ct that a stipulation had been entered
11	into that this is a lawful two-family house?
12	MR. FRIEDMAN: Yes, that stipulation was entered
13	into.
14	MR. LANNA: Very well.
15	BY MR. LANNA:
16	Q Agent, you are telling the court that because of
17	your concern about a leak, you didn't bother to go to the
18	very many agencies within that community to make inquiry as to
19	whether this was a one or two-family house?
20	A No, sir.
21	Q You didn't check with the phone company? For
22	example?
23	A No, sir, I did not.

XX

24

25

You didn't check -- does the phone company usually tip Q off your investigations?

eowh	20	

#### McKenna-cross

A It is possible, it could	be.
----------------------------	-----

- Q There is always a possibility, isn't there?
- A Yes, sir.
- Q The fact that you are there is a possibility.
- A Yes, sir.
- Q But you are asking this court to accept that as a substitute for not having made an investigation as to the dwelling for which you were seeking a search warrant?
- A I am telling the court that that is why I did not make any inquiry.
- Q This is rather common in your bureau, that you don't make these investigations if you can't determine from your visual contact whether or not it is more than a one-family house? Is this common practice?
  - A Yes, sir, it is common.
- Q Is this a rule in the department; are you taught this, to just ignore it and take your chances?
- A No, sir. It is not a rule. I was not taught it by any bureau training program. I was taught it by experience.
- Q But you are aware of the fact that our constitution calls for a description of premises?
- MR. FRIEDMAN: Your Honor, I would object. He is being argumentative and additionally, it is a legal matter

1	eowh 21 McKenna-cross
2	rather than a matter for this witness.
3	THE COURT: I think since you were allowed to ask
4	what the knowledge and attitude the witness had, Mr. Lanna
5	can ask that.
6	Do you know what the constitutional requirements
7	are for a search?
8	THE WITNESS: Yes, sir, you must describe the
9	premises that are to be searched.
0	Q Particularly?
1	A Yes, sir.
2	Q You agree that you sort of take a chance when you
13	this, isn't that so?
4	MR. FRIEDMAN: I object.
15	THE COURT: Sustained.
16	Q But despite that, you didn't bother to make any
17	inquiry because you were concerned that this might leak out of
18	wherever you made the inquiry?
19	A I did not make any inquiry because of the possi-
20	bility of a leak which could jeopardize weeks and months of
21	investigation.
22	Q Did you ever think of going to the office of
23	Land and Records in that community and just pulling a book
24	out?
25	A No. sir, I never considered it.

1	eowh 22 McKenna-cross/redirect
2	Q You never thought of that?
3	A No, sir.
4	Q No one else did either?
5	A Apparently not.
6	Q You know what I am talking about?
7	A No, I am not familiar with that office.
8	Q There are offices in each community, you know,
9	where you can go in and you just pull a book out and it will
10	show you all about the apartments in the neighborhood and
11	tell you whether they are legally one-family, two-family, mult
12	ple.
13	A Thank you. I wasn't familiar with that office.
14	MR. LANNA: I have no further questions of this
15	witness.
16	MR. FRIEDMAN: Just one other questions, your
17	Honor.
18	REDIRECT EXAMINATION
19	BY MR. FRIEDMAN:
20	Q Prior to conducting the search of 77 Broadway,
21	were you familiar with a conviction by Mr. Roman dealing
22	with bribery?
23	A Yes, sir.
24	Q Of Mr. Roman dealing with bribery?
25	MR. LANNA: If your Honor please, may I pose an
	objection. I don't see what the relevancy of that has to do

xx

## McKenna-redirect

with it.

THE COURT: What is the relevance of that to the question of whether this -- are you trying to show his fears of leaks were well-founded?

MR. FRIEDMAN: Yes, sir, just on the basis of his fears of leaks and as to why he wouldn't make detailed inquiry.

THE COURT: I think it is doubtful whether it is probative, but he has answered that question, and I think that is sufficient.

MR. FRIEDMAN: Yes, your Honor. I was going to go into the nature of the officials that were bribed.

THE COURT: If it can be connected with the prior testimony, I will allow it. In other words, if there is some indication of bribery of local officials or something of that sort.

MR. FRIEDMAN: Yes, sir.

MR. LANNA: Do you mean local officials, if your Honor please, in Jersey?

THE COURT: Yes. In the locality we have been talking about.

MR. LANNA: Very well.

MR. FRIEDMAN: Well, your Honor, it was not the officials in New Jersey. It was officials elsewhere.

# eowh 24

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

XX

#### McKenna-redirect

THE COURT: We don't need details. As a matter
of fact, you are asking about his state of mind, I will allow
the one more question. Did you notice that he was convicted -
you said you knew he was convicted of bribery. Did you know
what the status or standing of the person who he was convicted
of bribing was?

THE WITNESS: Yes, sir, I did.

THE COURT: Who was that?

THE WITNESS: It was an a state policeman.

THE COURT: All right.

MR. FRIEDMAN: No further questions.

MR. LANNA: I have no further questions.

THE COURT: Thank you very much, sir.

THE WITNESS: Thank you, sir.

(Witness excused.)

THE COURT: Any further witnesses?

MR. FRIEDMAN: Yes, Mr. Lance Emory again.

ALLEN LANCE EMORY, recalled.

DIRECT EXAMINATION

BY MR. FRIEDMAN:

THE COURT: May I remind you that you have been sworn in this proceeding and you are still under oath.

THE WITNESS: Yes, sir.

THE COURT: Be seated, please.

25

24

	1	eowh 25 Emory-direct
	2	Q Sir, were you present immediately after the
	3	morning recess yesterday?
	4	A Yes, I was, sir.
	5	Q Were you out in the hall?
	6	A Yes, sir.
	7	Q What did you observe?
	8	A Immediately after the recess, I was in the hall
	9	approaching the exterior door to the courtroom . Upon ap-
	10	proaching that door, Mr. Anthony Politi exited. He was
	11	laughing. He made a gesture with his hands and said, "I
	12	should have got an Academy Award."
	13	MR. FRIEDMAN: No further questions.
	14	MR. LANNA: I have no questions.
	15	THE COURT: Thank you, Mr. Emory.
	16	(Witness excused.)
	17	MR. FRIEDMAN: Mr. Robert Parkhurst, please.
xx	18	ROBERT PARKHURST, resumed.
	19	THE COURT: Mr. Parkhurst, I remind you you are
	20	still under oath.
СX	21	DIRECT EXAMINATION
	22	BY MR. FRIEDMAN:
	23	Q Mr. Parkhurst, with respect to Exhibit No. 5, which
	24	I show you, will you please read the description thereon.
	25	This is Joint Exhibit No. 5.

xx

38° eowh 26 1 Parkhurst-direct A Yes, sir. 2 Have you read the description? 3 Yes, sir. A 4 You had occasion to be out at the Bobin Inn 5 Motel, is that correct? 6 A I have. 7 8 Q How many cottages are in that specific location 9 which is described in Joint Exhibit No. 5? 10 A Maybe around 5, 6 cottages. Q There are five or six cottages in that exact 11 12 location? A No, sir, just this one. 13 Q In the exact location, described in Joint Exhibit 5, 14 there is only one cottage in that exact location, is that 15 correct? 16 A Yes, sir. 17 18 19 5 before me. 20

THE COURT: Let's be specific so we know what we are talking about and it is on the record. I have Exhibit

What description are you reading, on page 1? Is that right?

THE WITNESS: Yes, sir.

21

22

23

24

25

THE COURT: You are reading -- by the description, you mean a certain bungalow or summer type cottage and I think

1	eowh	2
---	------	---

#### Parkhurst-direct

this would be the description located in the extreme northeast of the Bobin Country Club and Day Camp, is that what you mean?

THE WITNESS: That is correct.

MR. LANNA: If your Honor please, I think it might be of assistance, we aren't disputing that that cabin was in the northeast corner. Everything Mr. McKenna said, we are not disputing what he might have had in his log.

THE COURT: You are not disputing particularity.

MR. LANNA: We are disputing whether this was properly described.

THE COURT: Not properly described, but whether as of the date of the search, the search warrant did say northeast.

MR. LANNA: Yes. Your Honor has put it as well as I could put it.

MR. FRIEDMAN: The only reason I brought this up was because yesterday there was a question raised as to how many bungalows were in that area and therefore, I wished to clear it up that there was only one in that exactly described area, your Honor.

THE COURT: Apparently Mr. Lanna doesn't contest that.

MR. LANNA: No, I don't.

	38 782a
1	eowh 28 Parkhurst-direct
2	MR. FRIEDMAN: Thank you. No further questions,
3	your Honor.
4	THE COURT: Thank you, Mr. Parkhurst. I take it
5	you have no cross examination?
6	MR. LANNA: No, sir.
7	(Witness excused.)
8	MR. FRIEDMAN: Mr. Carl W. Amaditz, if your
9	Honor please.
10	CARL W. AMADITZ, called as a witness by the
11	government, having been first duly sworn, testified
12	as follows:
13	DIRECT EXAMINATION
14	BY MR. FRIEDMAN:
15	Q Sir, what is your occupation, please?
16	A I am a special agent with the Federal Bureau of
17	Investigation.
18	Q How long have you had that occupation?
19	A Almost three years.
20	Q Have you participated in several gambling investi-

gations during that period of time?

A Yes, I have.

A Yes, I did.

Yonkers, New York?

xx

21

22

23

24

25

Q Sir, did you conduct a search of 15 Eastview,

1	eowh 29 Amaditz-direct
2	Q When did you conduct that search?
3	A On August 29, 1972.
4	MR. FRIEDMAN: Your Honor, this pertains to Mr.
5	Alphonse Cuzzo.
6	(Mr. Anolik entered the courtroom.)
7	Q Will you please describe the location of 15 East-
8	view, Yonkers, New York?
9	A Yes. 15 Eastview Avenue in Yonkers is a white
10	asbestos faced detached dwelling with a single common doorway,
11	two stories.
12	THE COURT: Will you read that answer?
13	(Record read.)
14	THE COURT: Thank you.
15	Q And what did this house appear to be to you in term
16	of a dwelling place?
17	A The house structural was a one-family dwelling,
18	everything typical of a one-family residence.
19	Q Now, sir, did you have occasion to check the
20	Criss-Cross Directory?
21	A Yes, I did.
22	Q What is a Criss-Cross Directory?
23	A A Criss-Cross Directory lists individuals by
24	street location, by street address. I think it is published
25	by Coles. I checked it at the White Plains resident agency.

### Amaditz-direct

A I found one resident listed at 15 Eastview Avenue, a Robert Hlawatsch.

Q What did you find?

Q Now, sir, when you entered 15 Eastview, where did you search?

A When we entered 15 Eastview Avenue, there was a door on the right. That door --

THE COURT: You mean inside the house?

THE WITNESS: Inside the house, yes. There was a door on the right and we knocked and we looked around and we didn't see evidence of a numbers bank which we knew to be at that location.

We then went up a stairway which was also inside
the house to another door which was locked. We had to force
that one open. Again, we saw -- we didn't see the evidence
of a policy bank. By this time, one of the residents, Hlawatsch
had come home and he showed me the basement which he said was
owned by both him and Alphonse Cuzzo.

Q Jointly?

A Jointly, yes. This is where all the evidence of our search took place, where we found it.

Q Now, sir, with respect to both the resident downstairs, do you know his relationship to the Cuzzos?

A Yes, I found out later through one of the other

1	gown 51 Amadicz-dilect
2	agents that he was Cuzzo's
3	THE COURT: Who?
4	THE WITNESS: This downstairs resident.
5	THE COURT: Do you know his name?
6	THE WITNESS: Yes, Robert J. Hlawatsch.
7	THE COURT: The man you have been talking about?
8	THE WITNESS: Right. At that time, he admitted
9	to just being an acquaintance of Cuzzo. He said he had been
10	up there a few times. However, it came out later that his
11	wife was Donna Cuzzo's mother.
12	THE COURT: Donna Cuzzo being Mr. Cuzzo's wife
13	or what?
14	MR. FRIEDMAN: Yes, your Honor.
15	THE WITNESS: Yes.
16	THE COURT: Let me see if I have it straight.
17	So far as your information is concerned, Mrs. Hlawatsch is
18	Mrs. Cuzzo's mother-in-law?
19	THE WITNESS: Yes.
20	Q Now, sir, with respect to your experience as an
21	FBI agent, I will withdraw the question.
22	Did you check with the City Registrar as to what
23	kind of a dwelling this was?
24	A No, I did not.
25	Q Why didn't you make that check?

## Amaditz-direct

A Well, first of all, from all external appearances it appeared to be a single-family dwelling.

In addition to that, when we start checking around with people not involved in the investigation in a sensitive type gambling investigation like this, we never know who the friends of the subjects are, who exactly we can trust. We could be wasting months of investigative effort if the word got back.

THE COURT: All right, I have heard this before and I understand what you are saying.

THE WITNESS: Yes, sir.

Q Now, sir, lastly, are you familiar with the policy of the Federal Bureau of Investigation with respect to retaining automobiles?

- A Yes, sir, I am.
- Q What is that policy, sir?

A The policy is that we only seize a vehicle upon a forfeiture which is based on our statute title 18, Section 1955.

In other instances, on another statute, we may search the vehicle, but unless it is seized as evidence, it is returned to the owner after the search is completed.

MR. FRIEDMAN: Thank you.

MR. LANNA: May I refrain from examining? I think

	1	eowh 33 Amaditz-direct
	2	I would just be taking the same type up that I took with the
	3	other agent relative to the search in New Jersey.
	4	I think your Honor is well aware of what I might
	5	ask.
	6	THE COURT: I am. Very well.
	7	MR. FRIEDMAN: I am sorry, one further question,
	8	your Honor, if I might.
	9	Q With respect to the automobiles that were seized
	10	pursuant to this investigation, were they retained?
	11	A Yes.
	12	MR. FRIEDMAN: Thank you.
	13	THE COURT: Which autos were those?
	14	MR. FRIEDMAN: May I have Mr. Reutter state for
	15	the record which automobiles?
	16	MR. REUTTER: I believe there were 14, your Honor
	17	THE COURT: Never mind.
	18	MR. ANOLIK: Your Honor, may I ask one question?
x	19	CROSS EXAMINATION
	20	BY MR. ANOLIK:
	21	Q Was any forfeiture proceeding issued against the
	22	vehicle?
	23	A This was a search of a residence I was involved
	24	in.
	25	MR. ANOLIK: He asked a question about a vehicle

### Amaditz-cross

and I thought I had missed something.

THE COURT: He asked a general question.

MR. FRIEDMAN: Yes, general.

MR. ANOLIK: I thought I had missed something.

THE COURT: Again, in the sense of applying to all the vehicles in this case.

## CROSS EXAMINATION

### BY MR . LANNA:

Q To your knowledge, of all of the vehicles taken in this case, were any forefeiture proceedings commenced, to your knowledge?

MR. FRIEDMAN: Your Honor, I would respectfully state that the actual seizure is the commencement of the forefeiture proceedings.

MR. LANNA: I don't agree with that.

MR. ANOLIK: I except to that, your Honor.

on this without arguing and I don't know whether this witness will know the answer to the question or not, but from what your conversation indicates, I suppose it is likely that forfeiture — that automobiles were seized, but that it has not been adjudicated that the government is entitled to the forfeiture. Is that what you are trying to bring out?

MR. LANNA: No. Perhaps Mr. Friedman can answer

1 ebwh 35

#### Amaditz-cross

this very simply.

THE COURT: Let's let Mr. Friedman represent to us what he understands the facts to be.

MR. FRIEDMAN: Your Honor, the facts are that these were seized and that they will be forfeitted. That the civil division of the United States Attorney's Office will eventually proceed with the final forfeiture.

of the word understand is different from yours, I mean when I say I understand, I interpret what you have said to mean that the automobiles have been seized but no proceedings have yet been commenced with regard thereto?

MR. FRIEDMAN: Yes, your Honor.

MR. ANOLIK: We merely wanted to preserve an objection on these motions to suppress to the fact that if your Honor should find in any case that the arrest was improper or that the seizure was improper that there would be no basis for the forfeiture to begin with and, consequently, we would be entitled to the property.

THE COURT: It is within your rights to do that.

MR. LANNA: In addition to the fact that if the arrest was illegal and of course, if no forefeiture had actually been commenced, we would contend that the search and the seizure of any articles within those vehicles equally is illegal.

#### Amaditz-cross

THE COURT: All right.

3

1

2

MR. LANNA: I have no questions.

4

MR. ANOLIK: No further questions.

5

MR. FRIEDMAN: No further questions.

6

MR. ANOLIK: Your Honor, may I apologize to the Court, I was before Judge Greisa on another case, and he

8

9

7

THE COURT: That is all right.

10

Thank you, Agent.

11

(Witness excused.)

12

covered for both of us.

13

14

15

16

17

18

19

20

21 22

23

24

25

MR. FRIEDMAN: Your Honor, the only other thing is that there were some other searches of people who are not named as defendants and the evidence may be admitted at trial.

However, the government's contention is that these defendants would not have standing since it was neither their premises nor anything that they had control, any individuals or premises that they had control over, your Honor.

MR. ANOLIK: Your Honor, my position on that would be under Rosenkrantz against the United States, and cases of that sort that the seizure of anybody who is a co-defendant or co-conspirator or an accomplice, that while pretrial a person may not have standing because he does not occupy the dwelling or the vehicle, if that evidence is to be used at a

1 ebwh 37

joint trial that then standing arises that it not be used against them at the trial, so I think there is a distinguishable situation here, your Honor, that if we are talking about pretrial, I would say that perhaps the U. S. Attorney has a point.

But if he intends to use them at the trial, we would want to reserve the right to object at that time.

THE COURT: I don't think you are required to waive the right to object at that time. I will try to educate myself so I can make a quick ruling on that.

I might say this. If I conclude that Mr. Anolik is correct, I may want to review the situation in advance because there is no point in stalling things in the middle of a trial.

MR. ANOLIK: I can give your law clerk that case.

THE COURT: I made a note of the name, but please do.

MR. ANOLIK: There are two or three others.

THE COURT: Is there anything else, gentlemen, at this time?

MR. ANOLIK: No.

THE COURT: I think I set a time limit yesterday, but if I didn't I would like to set a time limit and have

Mr. Lanna and Mr. Anolik communicate it to defense counsel for the submission of pssible hearing memoranda. I think I made it two weeks, did I not?

MR. LANNA: I don't recall.

It would be the 18th.

MR. ANOLIK: I think you said the 13th, if I am not mistaken.

THE COURT: I don't remember saying the 13th.

Two weeks, I don't remember naming a specific date.

Mr. Friedman, supposing we say ten days for you thereafter. I ernestly hope this will be sufficient. We have this set down now for early June for trial.

MR. ANOLIK: I am wondering about the electronic surveillance. I am wondering whether we are going to go into that.

THE COURT: Yes.

MR. FRIEDMAN: The government at an earlier time raised with your Honor the request that it might be done after trial since the government has derived no evidence from the electronic surveillance, and we think it would be more convenient for the court and the parties concerned, and it has been done in the past in this circuit, your Honor, to have the hearing to show that none of the evidence is tainted subsequent to trial, your Honor.

THE COURT: I believe you said that the Court of Appeals had approved of that.

MR. ANOLIK: They approved it in the Birrelle case, but I think it has been a criticized approval. It was an unusual situation in the Birrelle case.

THE COURT: You are speaking about the old Birrelle case?

MR. ANOLIK: He has about seven cases.

THE COURT: The Court of Appeals disagreed with me in holding a suppress matter until after the trial was completed.

MR. LANNA: That is the impression I got.

THE COURT: That was not a wiretap.

MR. ANOLIK: I don't think they considered it particularly the correct thing to do.

THE COURT: It would be possible to make the distinction, I don't know know whether cases do, between electronic surveillance and other matters because electronic surveillance can, of course, be very time-consuming.

MR. ANOLIK: I agree.

advance that it does not believe that there will be any use made of the material that is available, there is a lot of effort that would have to be put into it on the representa-

tion that it is all going to be wasted.

What is the scope of the enterprise here?

How much material is there?

MR. FRIEDMAN: Your Honor, I think it would be very broad and very complicated matter to deal with and it would be very time-consuming.

on this: Within the next week, I'd like to have the government and defense counsel, and you will have to communicate this to the other defense counsel, to submit to me any memorandum just with the names and very little comment of the cases which they think are relevant to this issue so that I can sit down and dispose of this issue right away and so that if I conclude that we should do something before the trial, we can set up a schedule for doing it.

MR. ANOLIK: May I just have a representation as to whether or not transcripts exist of the electronic surveillance, your Honor?

MR. FRIEDMAN: As to some of the electronic surveillance, transcripts do exist, your Honor.

MR. ANOLIK: Perhaps they could be turned over because I am thinking of Alderman against the U.S. and cases of that sort where the Supreme Court has indicated that the prosecutorial eye may be out of focus on what is beneficial

to the defense and we should really make that determination.

I have the greatest defense to Mr. Friedman.

THE COURT: I am well aware of that problem and I will bear it in mind when I make my decision.

Mr. Friedman, would you make some indication in your memo on this subject as to what material is presently available in transcript form?

MR. FRIEDMAN: Yes.

MR. LANNA: If your Honor please, I have just one additional problem which I would like to make mention of and that is I have no problem with the trial date as it presently exists, because I frankly don't think this case should run more than eight or nine trial days, ten trial days tops, would you agree?

I am concerned, when Mr. Rosato represented me a few weeks ago, I never thought for a moment that the trial would be projected so far in advance because I recall we had originally set it for March 26.

THE COURT: Yes.

MR. LANNA: I must report in on June 15 to

Fort Bragg. I command a battalion, the second battalion,
and that is the only concern I have.

THE COURT: I am glad to be warned in advance and all I can say is that we would have to sit late some nights.

MR. LANNA: I shall. It concerns me now that we are starting to talk about this wifetap.

MR. ANOLIK: Your Honor, may I ask through you whether or not the U. S. Attorney knows if there were any court orders authorizing the wiretaps because we would like to see those, too, if they exist.

THE COURT: Do you know, Mr. Friedman?

MR. FRIEDMAN: Yes.

MR. LANNA: Couldn't you send those out to us in advance and perhaps we could at least look into it.

MR. ANOLIK: I am thinking of the bottom case just decided last week by the U. S. Court of Appeals, they remanded it for a full hearing.

THE COURT: I read that.

MR. ANOLIK: I don't want to have that problem here, your Honor.

THE COURT: I sure don't want to have it here.

MR. FRIEDMAN: Your Honor, I will write a memorandum with respect to the government's position on this.

THE COURT: Covering all of the issues that have been raised today.

MR. FRIEDMAN: If your Honor wishes it within a week.

THE COURT: I think for everybody's advantage we should cope with this question as early as possible because I

ebwh 43 1 certainly don't want to postpone the trial date again. 2 MR. LANNA: No. 3 MR. FRIEDMAN: Is it my understanding, your Honor, 4 that it is Mr. Anolik's firm position that he wishes to 5 6 have a hearing prior to trial? 7 MR. ANOLIK: I am not taking that firm position at 8 all. 9 THE COURT: He wants you to give him the information you have so he can take a position. 10 MR. ANOLIK: Right, because until I get your 11 memo, I can't really take a position. I don't doubt the 12 sincerity of your statement, I want you to understand that, 13 but I would want to make an independent evaluation. 14 MR. FRIEDMAN: Yes, sir. 15 MR. LANNA: Thank you. 16 THE COURT: Thank you very much, gentlemen. 17 (Adjourned at 12:10 p.m.) 18 19 20 21

22

23

24

25

## WITNESS INDEX

Name	Direct	Cooss	Redirect	Recross
Allen Lance Emory	21	36	83 97	89
(Recalled) Michael Growney	383 99	104	114	115
Lowell L. Barton	116		130	
James Boylan	132	139		
Michael Camporeale	155	162		
Raymond Shaw	182	219		
Robert Parkhurst (Resumed)	222 384	229		
Anthony F. Politi, Sr.	231	243		
Pearl L. Tytell .	267	302	311	
Joseph P. McNally	313	327	348	350
William McKenna	360	368	381	
Carl W. Amaditz	387	392	2	

			13
1			405
2		EXHIBIT INDEX	In
3	Government	Identification	Evidence
4	1	20	
5	2	22	25
6	3		35
7	5		180,207
8	6		180,207
9			
10			
11			
12	Defendant Anthony Politi		
13	<u> </u>	193	205
14			4
15	В.	22 <b>4</b> 337	
16	С	33,	
17	Joint		
18	6A,5A		282
19	6A	282	
20			
21			
22			
23			
24			
25			

Assistant United States Attorney

VINCENT LANNA, ESQ. For Defendant Anthony Politi

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

IRVING ANOLIK, ESQ. For Defendant Gerald and Philip Politi and Harry Weis

(Continued on page 2.)

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

APPEARANCES: (Continued)

HARROLD FARRINGER, ESO. For Defendant Michael Roman

EDWARD PANZER, ESQ. For Defendant Robert Peters

GEORGE E. BELLANTONI, ESQ. For Defendant Alphonse Cuzzo

PATRICK WALL, ESQ. For Defendant Arthur Frangello

DAVID BLACKSTONE, ESQ. For Defendants Leonard Harrison, Lawrence Johnson and Eddie Washington.

000

(In the robing room.)

MR. FARRINGER: Your Honor, they brought Michael Roman over in a wheel chair. I don't think he is trying to be difficult but I would like to give you a short history what has been with him concerning the stipulation so it is very clear on the record.

After we had our original conference here on the day, the day we all met, a week ago today, as your Honor may know that very day I met with Mr. Roman downstairs in this building where they brought him over and he was in a wheel chair and I discussed this whole matter of stipulation and Mr. Lanna was there and we had reached an agreement. I think we still have the agreement, Judge.

rk

At that point we had no stipulations but I gave him an outline of what I thought the stipulations involved, a stipulation that if the witness were called, they would testify to certain facts without our admitting to the truth of them or anything else.

After that, your Honor, we met and went over the stipulations. I went over to see Michael Roman in discharging my responsibility both to him and the Court so there won't be any delay.

I sat over West Street for an hour. They said he was in the infirmary and couldn't come down. They tried to bring him down on foot and he had a problem which apparently nobody doubts and they put him back in the infirmary.

This morning, of course, we had the final stipulations in final form and he came in and he said they took him out again today without having a wheel chair. He asked for a wheel chair and he fell trying to get into the van.

They then took him back and put him in a wheel chair and he said he just feels terrible. The nurse was up while I was out there and gave him nitroglycerine tablet.

Just before I came in here, he said he was prepared to sign the stipulations but that he wanted to read
them. He started to read them. Of course, people have been
coming up and speaking to him and I have been trying to keep

everybody away from him so he could read them.

I think I can represent to you and I have been talking to him and in fact encouraging him in this direction but I have to be careful that I don't ever be placed in a position where at some later date he feels he was pressured into signing it.

THE COURT: I will take my chance on that if you will.

MR. FARRINGER: Let me say this. I am pained by the delay you have experienced here. I think your Honor if I could have just a few more minutes--

THE COURT: Let me make this suggestion both because of his health and the numbers of people in the court-

Why don't you take him into the witness room yourself and get this matter cleaned up.

MR. FARRINGER: I would like that.

THE COURT: While you are here, of course, I hadn't seen the stipulations until this morning though they were left at my office apparently on Friday, I hadn't seen them.

I don't know whether you expect me to have read
them or not, but what I would like to do since this case
involves more of a trial or will involve more of a trial than

the ordinary trial on stipulated facts, and I will indicate for the record that the form of stipulation here to separate as to each witness and so on, is to have Mr. Friedlan when the trial opens, make an opening statement as he ordinarily would, perhaps in somewhat less detail and either then or at the end of the conclusion of the evidence, whatever it is to be, I would like each counsel to indicate in what respect he believes the Government has not proven its case so you may be in a position to judge.

Also, I want to be reminded—I am returning now,
Mr. Friedman, the grant jury testimony which I will state
on the record I have read in full. I find absolutely nothing
contained in there which would be useful to any of the
defendants and the issue raised under Estappa about whether
there was a summation of the testimony by Government agent
on hearsay basis is not only not true here, but there are
mean witnesses who testified on the basis of personal
knowledge and at the conclusion of the grand jury deliberations, Mr. Friedman specifically pointed out to them that
Officer Reutter had testified on the basis of hearsay and—
at least in part—and asked them if they wished to have the
witnesses to whom Officer Reutter referred appear in person
and it was specifically indicated by the grand jury foreman
they did not wish to do so, so I find the grand jury minutes

to be entirely void.

The only other matter, when we start on the trial,

I want to remember to put into evidence all the photographs

offered to me by the Government and those who contested the

question of particularity of designation of the respective

family houses.

I have filed my op'nion denying all the motions and there are copies here of that opinion for you. I suggest at least that Mr. Farringer not himself be diverted.

MR. LANNA: I might point out, your Honor, we had decided to sum up, each of us in the end--

THE COURT: If you want to make any opening statement, it is all right with me.

MR. FARRINGER: Your Honor, I might just alert you to one question and that is that it occurred to me in keeping with a real trial in terms of live witnesses, that what we probably should do, at the appropriate time, register the normal objection we registered in terms of, for instance, the problems of hearsay and I think that can be done economically by all of us at the appropriate time.

THE COURT: I agree.

MR. FARRINGER: The other thing, your Honor, it will be important to us though ordinarily in a case where you are trying it before the Court, the instructions to the

1

3

4

5

6

7 8

9

10

11

12

13

14

15

16

17 18

19

20

21

22 23

24

25

jury are not important as in this case, your Honor knows the varying interpretations of the word conduct which place some importance in this case in terms of evaluating the evidence and what I am in the process of doing, I am taking my request to charge, which I already supplied you with a copy of and I thought perhaps I ought to indicate the ones in that we ought to know in what way you are going to apply the law in the case.

MR. FRIEDMAN: Your Honor, I am going to run across the street. There is one stipulation that isn't present.

THE COURT: Off the record.

(Discussion held off the record.)

(Case called.)

MR. FRIEDMAN: Government ready.

THE COURT: Mr. Lanna and Mr. Panzer are not here.

MR. ANOLIK: On behalf of Philip Politi, Gerald Politi and Harry Weis, ready.

THE COURT: Mr. Bellantoni?

MR. BELLANTONI: Defendant Cuzzo is ready to proceed.

THE COURT: Mr. Wall?

MR. WALL: Defendant Frangello and Visconti are present.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: Mr. Blackstone?

MR. BLACKSTONE: Defendants Harrison and Washington, ready.

THE COURT: Gentlemen, as soon as counse arrives, I will be ready to proceed.

(Recess.)

THE COURT: Let the record indicate that Mr. Lanna is present and Mr. Panzer is present.

The first order of business is to present the waivers of jury trial.

MR. FRIEDMAN: I only have nine waivers.

Cuzzo, Washington, Harrison, Johnson, Anthony Politi, Michael Roman, Louis Visconti, Arthur Frangello, Robert Peters.

THE COURT: Is there any counsel who has not furnished one?

I ask all the defendants except Mr. Roman, who I understand is not in good health, to stand up.

Gentlemen, I am addressing myself to all of you on trial. Is there anyone among you and raise your hand if it applies to you, is there anyone amongyou who does not know he has a right to be tried by a jury of 12 men and women on the charges against him and that he could not be found guilty unless that jury unanimously agreed that the charges were

proven against him beyond a reasonable doubt?

Is there anyone who does not understand this?

Nobody is raising their hand, therefore I assume
you all do understand it.

I will go down the list of defendants and ask each one of you to answer me personally whether he has or has not voluntarily signed a waiver of jury trial, which means giving up the right to be tried by a jury and being tried by myself instead.

Before I do that, I want to ask you all to raise
your hand again if you don't understand it, whether you
know if I accept this trial and try the case myself without
a jury and should find any of you guilty, and I am not saying
I will or will not, because I don't know the facts of the
the case, but if I should, do you understand that I can impose the same sentence on you that could be imposed if your
Honor tried and found guilty by a jury?

Apparently everybody does.

I will ask each one of you whether you have signed a jury waiver voluntarily.

Mr. Anthony Politi, have you signed such a document?

MR. POLITI: Yes.

THE COURT: Was it voluntary?

1

3

4

5

6

7

8

9

10

11 12

13

14

15

16

17

18

19

21

22

23

24

25

MR. LEONARD HARRISON: Yes, your Honor.

THE COURT: Mr. Lawrence Johnson.

MR. LAWRENCE JOHNSON; Here, your Honor.

THE COURT: Mr. Louis Visconti.

MR. LOUIS VISCONTI: Yes, your Honor.

THE COURT: Mr. Eddie Washington.

MR. EDDIE WASHINGTON: Yes, your Honor.

THE COURT: Mr. Carry Weis.

MR. HARRY WEIS: Yes, your Honor.

THE COURT. You may be seated, gentlemen.

In addition to that, I understand that a large part, and I want to be sure that you understand, that a large part of the evidence that is going to be put into this record by the United States Government will consist of a stipulation, that is, a document by which the parties agree that if certain witnesses named in those stipulations were called here, they would testify in a certain manner.

I also understand it to be the fact that the defendants do not admit by having signed any such stipulation that what the witness would testify, would be the truth or that their counsel give up any objections to which they are normally entitled just as if the witness were sitting in that witness chair.

Do you all understand that?

I understand that all of you have signed that

stipulation indicating your approval of that method of putting that evidence for whatever it is worth into the record.

Is there anyone here who objects to that method of proceeding?

There is no answer and I assume that means no one objects.

May I see the waivers themselves, please?
(Pause.)

THE COURT: All right, gentlemen, I find the waivers of jury trial to be in order and I have approved them and I will hand them to the Clerk of the Court to be made part of the record in this case.

There are twelve of them.

Mr. Friedman, I am prepared to proceed. I would like to have the Government make an opening statement for the information of the Court, and the defendants.

MR. FRIEDMAN: Yes, your Honor. There have been several stipulations and the Government intends to move that they be admitted into evidence. There is one stipulation relating to David Weygant, which apparently my secretary has lost and I did have the handwritten version of it and I told her to type it and it will be done after lunch period, your Honor.

22 23

The indictment alleges a conspiracy and also a substantive count. The conspiracy is alleged to have begun in September of 1970 and carried forward to the date of indictment.

THE COURT: Which was?

MR. FRIEDMAN: In January 1973, your Honor.

THE COURT: Thank you.

MR. FRIEDMAN: There were several searches involved, but basically the picture which the indictment portrays is one of gambling, a gambling operation where the basic business, the day-to-day betting and the dropping off to the policy spots occurred in Newburgh, Poughkeepsie, New York.

THE COURT: Before you go farther in describing the indictment to me which of course I have read, would you be mindful of the fact what I am anxious to have you state in your opening statement, what the Government expects to prove.

MR. FRIEDMAN: Yes.

The Government expects to prove that there was a search conducted on June 2, 1972 and Michael Roman was found in a policy bank. The search was at 77 Broadway in Parkridge, New Jersey.

The Government also expects to prove that there was

4 5

7 8

nd 1 11

a search conducted at 94 Garden Street in Poughkeepsie,
New York and that there were several surveillances conducted
linking Mr. Lawrence Johnson to 94 Garden Street, your
Honor.

The Government expects to prove there was a search at 199 South Street in Newberg, New York on June 14, 1972 and Mr. Eddie Washington and Mr. Leonard Harrison were found inside that.

That was a policy spot, a controller spot.

EP

3

4

5

6

9 10

11

12

13

14

15

16

17

18

19

20

21 22

23

24

25

The government expects to prove that there was a search at 15 Eastview Avenue, Yonkers, New York on August 29 and there was a policy bank found there, and Mr. Hlawatsch the step father of Mr. Cuzzo will testify that the room in which the policy paraphenalia was found was the exclusive room of Alphonse Cuzzo.

The government also expects to prove there was a search at 23 Gidney that will again was a policy connection spot and that was at Newburgh, New York. In the 25 Gidney search, Mr. Beeman Bowman had been seen going in and out of there. Mr. Beeman Bowman's -- at -- a note referring to Beeman Bowman was also found in 77 Broadway, the bank in which Mr. Roman was located. And a note referring to Beeman Bowman, to wit, Beeman took \$70 for his radiator, was also found amongst a package of money and notes that were at Michael Roman's feet on 8-29-72 when Michael Roman was arrested.

The government will show several surveillances in which Mr. Alphonse Cuzzo dropped off envelopes during the month primarily of August 1972. He would drop off envelopes at a telephone booth and then Michael Roman picked up those envelopes.

The government also has surveillances -- excuse me. On 8-29-72, Mr. Gerald Politi dropped off an envelope and so did Mr. Alphonse Cuzzo.

Peters picked up. The one that Cuzzo had left was further down the line and it is the government's contention that the trio, Robert Peters, Michael Roman and Anthony Politi that were found in the car 8=29-72 were again going to follow this route and pick up the envelope that Michael Roman ordinarily did and the envelope that Alphonse Cuzzo left in this telephone booth on 8-29-72 when the government would contend the trio would in the ordinary course of events pick up, with policy adding machine ribbons such as would be given to the controller, one of the major controllers of the organization at the end of the day and they had an "M" written on them.

THE COURT: What do you contend that signifies?

MR. FRIEDMAN: The government contends that is

Michael Roman. At least that inference could be drawn.

Additionally, your Honor, there are meetings referred to of Anthony Politi -- Eileen Moran will testify that Louis Visconti hired her and this was in May of 1972 and she had a route whereby she would pick up from David Weygant then drop off the policy work to Patricia Hyatt, your Honor.

For approximately five days, Louis Visconti -for approximately five days, she picked up money from Michael
Roman per Louis Visconti's instructions and brought it back
to Louis Visconti. She would pick it up in the morning.

The government would contend that this arrangement, this situation is that the controller, the person at the end of the day is bringing the money back to his key aid and the key aid Louis Visconti supervised passing the money out and in fact David Weygant will testify that he met -- he will testify that he too was hired by Louis Visconti in Newburgh, New York and just before he was hired, he had to go to Michael Roman.

Louis Visconti told David Weygant he had to go
see the big boss and in order for David Weygant to be okayed
so they all went to Michael Roman then David Weygant was
okayed, approved for the operation.

Now, additionally, David Weygant will identify the fact that at the time that he met with Michael Roman, Louis Visconti told him to go back to the car. He did go back to the car. He went back to the car, Louis Visconti and Michael Roman and got in the car together. Louis Visconti had nothing in his hands at the time he got into the car. Louis Visconti then came out, he had a package that he was holding. He brought the package back to the car. He opened itup when he got there. It was a series of small packages of money, small packets of money and Louis Visconti told him these were the pays, then he went around and delivered the packets of money to various stops in Poughkepsie and Newburgh, New York.

Additionally, Eileen Moran will testify that on three occasions, when she did pick up the money from Michael Roman and Louis Visconti opened up the bag which she brought and there were groups of money in little packets and Louis Visconti told her these were the hits.

Patricia Hyatt will testify she is the neice of
Robert Peters and Robert Peters hired her at \$175 per week for
three hours per day, six days per week togo up to a certain
route, June 1971 through -- actually starting in June of
1971 through approximately mid-January of 1972. She performed the function of going to Newburgh, New York. First,
she picked up from Arthur Frangello, then she picked up from
Eddy Washington.

After the first month, Eddy Washington introduced Leonard Harrison as the person who would be delivering his policy work in the future.

Then after the first month, she picked up from Arthur Frangello then from Leonard Harris in Newburgh, New York and she would bring the work down.

Philip Politi introduced her the first day to the people who she would be picking up the work from and they had a meeting. He, Eddy Washington, Allan Handler came, Arthur Frangello came and they all met with Patricia Hyatt and Arthur Frangello and Eddy Washington gave the policy work to

there.

2

1

3

4

5 6

7

8 9

10

11

12

13 14

15

16

17

18

19 20

21

22

23

24

25

Most of these events are corroborated by surveillances, your Honor. An important aspect or some of the important aspects of the testimony in addition to what we have, what I have talked about so far, is the fact that on March 21, 1972, Anthony Politi, Robert Peters, Allan Handler and Arthur Frangello met in New York on a Tuesday at five o'clock in

the afternoon and they were photographed meeting together.

Patricia Hyatt the first day when Philip Politi brought her

I am sorry, Vailsgate, New York.

Additionally, your Honor, on 5-1-72, Harry Weis met with Lawrence Johnson in Poughkepsie, New York and later on that day at approximately 8:30, and Anthony Politi, Philip Politi and Harry Weis and Robert Peters met together for a short while in Yonkers, New York.

On 4-27-72, we have Gerald Politi picking up a package at 637. He drove to Philip Politi's house where they talked and Philip met with Anthony Politi and Robert Peters later that day in Greenberg, New York.

THE COURT: You don't need to reiterate the overt acts. I see them here, and I assume the government will try to establish them.

MR. FRIEDMAN: Yes.

THE COURT: There are a couple of questions I would

here is the same as the evidence that was presented in the

24

25

earlier case.

There are no -- none of the evidence presented

your Honor.

The government's contention would be that the conspiracy we are talking about here as distinguished from the conspiracy in 71 Crim. 857, we are dealing in this case with betting spots and betting locations that are exclusively in the Poughkepsie, New burgh and Beacon areas whereas the indictment 71 Crim 857 pertained to betting locations and betting areas that were exclusively in Westchester County,

THE COURT: That still doesn't bring us back to

MR. FRIEDMAN: Yes, your Honor.

The proof that the government would intend to present is that Agrel Simon will testify as far back as 1968 he met with Anthony Politi and Anthony Politi told him to go out and get several runners and that he would hire them. He told them the rate he would give them for performing the operation. He also asked Acrel Simon to go and what contacts Acrel Simon could arrange so the operation could be protected and he went with Acrel Simon to Barl Livingston. Acrel Simon worked for the operation all the way through approximately May of 1971 and his duties were in the Newburgh and Poughkeepsie area, your Honor.

The government's contention would be that even -the government would offer the proof during the 1971 period

2

3

4

5

6

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

that overlaps -- the government would offer the proof that overlaps with the indictment 71 Crim. 857 as part of the whole conspiracy. However, if your Honor decides that there is a double-jeopardy issue, if your Monor decides this would be double-jeopardy, then alternatively, the government would offer the proof of Bobbin Inn, which was January 26, 1971, which antedates the period of time alleged in the conspiracy in 71 Crim. 857, the government would offer the Bobbin Inn as against Anthony Politi and Harry Weis to show his relationship, the intent involved in this conspiracy and the government would ask the court to rule on whether the offense -- whether there was an offence committed from May 25 1971 onto the present date and the government would ask the Court then to exclude all dates prior thereto in terms of whether or not there actually was a conspiracy.

But I would ask that the evidence that antedates the conspiracy alleged in 71 Crim 857 be admitted as other kinds of proof, your Honor.

THE COURT: What proof does the government intend to offer with regard to the statutory requirement of \$2,000 daily take?

MR. FRIEDMAN: The government has computations by its expert that will testify as to the \$2,000 daily take.

Additionally, the \$2,000 daily take is an alterna-

7 8

tive to the 30-continuous day duration.

THE COURT: What else, if anything, will your expert testify to besides the take?

MR. FRIEDMAN: The general nature of a policy operation, so that your Honor will have before you some idea of the status of the various individuals that the factual stipulation set forth.

The expert will also identify what the evidence seized is, actually, in other words, how this fits into the whole scope and nature of the operation.

THE COURT: Is there anything else you wish to bring to my attention at this time?

MR. FRIEDMAN: Your Honor, with respect to the government's theory of proof as to the double-jeopardy issue as to the conspiracy that existed, as was stipulated, the Bobbin Inn bank that the individuals searched in the certain evidence that had corresponding runner codes to the runner codes in the trial in 71 Crim. 857, so too did the Robert Peters, the envelope with the adding machine tape of Robert Peters, that had corresponding runner coats and the percentage that they related — I am sorry. In Bobbin Inn, there were very few runner codes that related to the 71 Crim. 857 trial in comparison to the total number. There were one hundred and seventy-five runner codes and approximately 175 runner codes and very few in number related to the 71 Crim. 857.

approximate number. The government would contend, since its theory of proof relates to the conspiracy that took place in the Newburgh-Poughkeepsie-Connecticut areas as distinguished from the Westchester County areas, the government would contend as to that aspect of the Bobbin Inn, as to the Westchester County aspect, that either your Honor could exclude that seized material or the government would just offer it as other crimes evidence as part of the whole story.

TWE COURT: I will rule on that when I hear what defense counsel have to say.

MR. FRIEDMAN: With respect to Michael Roman who was also in the policy bank and Philip Politi neither of those individuals were tried in the 71 Crim. 857 so there would not be any double-jeopardy there.

In the Anthony Politi, the government intends to offer a tape recording of conversation between Anthony Politi and Raymond Sahw, a state police investigator and that was on October 28, 1970 and the government will contend that was part of the whole overall conspiracy. If again your Honor decided the double-jeopardy against the government, the government would offer that as other crimes evidence.

THE COURT: Thank you.

Gentlemen, I would epxect we would go to lunch

now. If there are any defense counsel that wish to make brief remarks, I will hear them now, otherwise, we will start immediately after lunch.

MR. ANOLIK: Your Honor, I just want to place this in proper perspective. We are not only arguing double-jeopardy, Mr. Lanna and myself, but I think the issue of collateral estoppel must also be considered in the framework of the double jeopardy issue.

MR. WALL: Your Honor, I signed a number of stipulations as did my clients. I don't know at the moment whether or not I have copies of all of the stipulations I signed and would simply suggest if Mr. Friedman could get all of them together over the luncheon hour, that ought to be the first order of business.

THE COURT: I agree with you.

MR. FARRINGER: Your Honor, I had in mind making a very brief opening statement, but I would defer it if you have no objection to doing it right after lunch because I was going to go into some legal issues that I think are appropriate to be brought to your attention.

As your Honor knows, I haven't had as much time as
I would like to confer with my client and I wonder if it is
possible for him to remain in the courtroom. I understand
he doesn't want to have any lunch and if I would be able to

rkwh 12 26 825a

stay with him over lunch, I would be able to confer with him.

THE COURT: What is the situation, Mr. Marshal?

MR. MARSHAL: Can the lawyer come down to the luncheon cell block?

THE COURT: If they can do it, unless -- if they don't have the manpower.

They have indicated they don't have the manpower and I understand they do have their problems on that.

I will ask you to do this. I will ask you to wait here until one o'clock and see what you can get done there.

We will adjourn until two o'clock and we will start promptly and counsel will be considered as disobeying the rule of the Court if they are not here to start promptly.

15 (Luncheon recess was taken at 12:40 p.m.)

## AFTERNOON SESSION

2:10 p.m.

MR. WALL: Your Honor, might we have Mr. Friedman read off the various identifying titles of the stipulation so that counsel can check to see that we have copies of them all?

THE COURT: Yes, I would like to check that myself.

I take it that all stipulations that have been executed are going to be used?

MR. WALL: One is being executed at the moment because we just got it.

THE COURT: Without that, is that correct, Mr. Friedman?

MR. FRIEDMAN: Yes, your Honor.

THE COURT: Mr. Farringer, before we broke for lunch, you said you wished to make a statement as to some legal questions.

Are those questions appropriate to bring up at this time or do you wish to bring them up when all the evidence is in?

MR. FARRINGER: Whatever your Honor prefers.

THE COURT: I prefer to have them that way since I would like to get started putting evidence in.

MR. FARRINGER: Fine, your Honor.

tions.

THE COURT: I would like to return those stipula-

This transcript of the telephone conversation I take it is going to be offered into evidence also?

MR. FRIEDMAN: Yes.

THE COURT: That settles the stipulation?

MR. FRIEDMAN: It is part of the stipulations.

THE COURT: I am ready for your statement. It seems to me this might be as good a time as any to offer the stipulations in evidence.

MR. FRIEDMAN: Your Honor, I hereby offer into evidence the following stipulations and exhibits referred to in said stipulations, your Honor.

The first stipulation is a stipulation relating to Raymond Shaw and it relates to the fact that Government Exhibit 2A is a true and correct taperecording.

The second stipulation is a stipulation relating to the testimony of Joe Tripodo which relates to the address of Patricia Ann Hyatt on 11/22/71.

The third stipulation relates to testimony--relates to the name of Beeman Bowman having been found on certain documents. It also relates to a surveillance of the activity of Beeman Bowman.

The fourth stipulation is for the purpose of the

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

double jeopardy contention of Mr. Lanna and Mr. Anolik, and it relates to the quantity of runner codes.

THE COURT: Is this evidence referring to these merely as stipulations, have they been marked yet?

MR. FRIEDMAN: No.

THE COURT: It would be a good idea to give them to the Clerk then you could refer to them by exhibit number so there won't be any confusion.

MR. FRIEDMAN: There are 20 stipulations, your Honor, and the Government has premarked its other exhibits, so I would ask they be marked Exhibits 24 through 44, your Honor.

THE COURT: Probably 43 starting with 24.

MR. FRIEDMAN: Your Honor, for the record, I would hand you up a list of Government exhibits that have been premarked.

(Government's Exhibits 24 through 43 inclusive, marked for identification.)

THE COURT: You discussed Raymond Shaw, Joe Tripodo, Beeman Bowman and a quantity of runner codes.

MR. WALL: I wonder if we might find out the numbers attached to each of those four?

MR. FRIEDMAN: The first Raymond Shaw stipulation is referred to as Exhibit 24. The second stipulation relating

to Joe Tripodo is 25. The third one relating to Beeman Bowman is 26.

The fourt one relating to runner codes is 27.

The Government Exhibit marked for identification number 28 relates to the fact that all the Politis are related by blood.

Government Exhibit 29 relates to testimony of
Dan Reidy, Joe Tripodo and Harry Mills which relates to arrests
and searches of Philip Politi and Arthur Frangello on
September 23, 1971.

Government's Exhibit 30 for identification relates to certain testimony of Dan Reidy and Joe Tripodo. Certain observations of Harry Weis, Patricia Hyatt, Leonard Harrison and others, your Honor.

Government Exhibit 31 relates to the transcript,

Government's Exhibit 2A. Excuse me, the transcript of

Government Exhibit 23A, which is a transcript of Government

Exhibit 2A.

MR. WALL: By whom is that?

MR. FRIEDMAN: Government Exhibit 31, Lance Emory, Carl Amaditz, relates to the conversation between Anthony Polici and Raymond Shaw.

Government Exhibit 32 marked for identification relates to the testimony of Acrel Simon.

3

4

5

6

7

8

9

10

11

12 13

14

15

16

17

18

19

20

21

22 23

24

25

Government exhibit marked for identification 33 relates to the testimony of Patricia Hyatt, your Honor.

Government Exhibit 34 relates to the testimony of Raymond Shaw and Robert Parkhurst as to the search at the Bobbin Inn.

Government Exhibit marked for identification number

35 relates to the testimony of Raymond Shaw as to his nickname
and certain items found on the books in the Bobbin Inn and
also relates to cross examination of Raymond Shaw.

Government Exhibit marked for identification number 36 relates to the testimony of Eileen Moran.

Government Exhibit marked for identification number 37 relates to the testimony of Raymond Shaw regarding his conversation with Anthony Politi and also his conversation with Michael Roman.

Government Exhibit number 38 marked for identification is a stipulation for the purpose of double jeopardy, of the double jeopardy contention of Mr. Anolik and Mr. Lanna.

MR. ANOLIK: Your Honor, I would like to make it clear we are alleging collateral esteppel as well.

THE COURT: You made that before. It is understood.

MR. FRIEDMAN: Government Exhibit marked for identification number 39 relates to the testimony of Roy Hyatt.

Government Exhibit marked for identification number 40 relates to the testimony of the fingerprint examiner.

Bobby Rattiffe.

Government Exhibit marked for identification number 41, relates to the testimony of Robert Hlawatsch. That relates to the testimony that 15 East View, Yonkers, the room where the policy paraphernalia was found, was maintained by Alphonse Cuzzo.

Government Exhibit marked for identification number 42 is the testimony of the agents of the Federal Bureau of Investigation Bob C. Reutter and several others regarding surveillances and seizures.

Government Exhibit marked for identification number 43 relates to the testimony of David Weygant.

Your Honor, there are various exhibits referred to in each of these stipulations which also are exhibits and the Government would move that all the stipulations and the exhibits referred to in the stipulations be admitted into evidence.

THE COURT: Any objections being admitted in evidence subject to the right of anybody--are there any objections?

MR. FARRINGER: No objection with the exception, your Honor, in reservation and I think we discussed with

1

3

4

5

6

7

8

xx 9

10

11

13

14

16

17

18

19 20

21

22

23

24

25

the Court, that we can object at a later time to the Court as to the relevance, the competency, as to our individual clients and on the basic hearsay rule whether or not this testimony would be binding on our individual clients.

THE COURT: All right. Subject to that exception which I recognize and the Government recognizes, the stipulations are received in evidence.

(Government's Exhibits 24 through 43, received.)

MR. WALL: Included among the exhibits I received
this morning were A, C, D and E.

They were not attached to any particular stipulations. Might we find out to what stipulations they are attached and where is B?

THE COURT: If that can be done on the spot, all right, otherwise I will ask you clear it up with Mr. Friedman after we have finished.

MR. FRIEDMAN: That relates solely to the double jeopardy and collateral esteppel issues. Those are exhibits to that particular stipulation. If they do not have B, I will certainly fill them in with it chough I am fairly certain they do have Exhibit B to the stipulation.

Shall I proceed.

THE COURT: Please do.

MR. FRIEDMAN: Mr. Harker, to the stand.

How long have you been employed by the Federal

25

2

1

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19 20

21

22

23

24

25

About 12 years.

Bureau of Investigation?

- Will you please state the nature of your occupation prior to being employed by the Federal Bureau of
- Investigation?
- A For two years I served as a trialcounsel or prosecutor in the United States Army. Then for five years I was engaged in the practice of law in Indiana. Three of those years as a prosecuting attorney in the county. I was admitted to practice law in the U. S. District Courts of Indiana, the Indiana Supreme Court, the Circuit Court of Appeals in Chicago and the United States Supreme Court.
- What experience with gambling have you had prior to becoming a special agent?
- As a prosecutor, I was engaged in several gambling raids. I also had occasion to visit horse racing tracks in several states and casinos in other countries.
- Will you please state your experience with gambling in the FBI as an investigator, sir?
- As an investigator, I worked for several years solely in the investigation of gambling violations. In this capacity I participated in and coordinated a number of gambling raids. I had occasion to interview extensively many witnesses or informants who were engaged solely as

7 8

professional gamblers. I viewed many thousands of items of gambling paraphernalia of all sorts during this period and I also either heard or read several hundred hours of legally accepted conversations among professional gamblers.

I also served for five years as a police training instructor.

Q Sir, would you please state your specialized training in gambling with the FBI Laboratory?

A When I became assigned to the gambling unit, my training there was under the direction of other agents who had been so-called gambling experts for a number of years.

Under their supervision I read and studied the major gambling works or books in the field. I studied and analyzed surveys or studies that had been prepared by the FBI covering all facets of gambling in all parts of the country.

Under their supervision, I also analyzed and interpreted several thousand items of gambling paraphernalia of all sorts and studied and analyzed and interpreted several hundred more hours of legally intercepted telephone conversations among the professional gamblers.

THE COURT: Is that the same several hundred hours you referred to earlier?

THE WITNESS: No, in addition.

In addition, I regularly lecture to groups of

special agents of the FBI and groups of police officers

concerning gambling and I assist in the preparation of

articles having to do with gambling.

Q Now, sir, your specialty is the specialty of identification and interpretation of bookmaking and numbers game records and gambling terminology and all the gambling

A It is.

paraphernalia, is that correct?

- Q Have you testified previously in State and Federal Courts as an expert in bookmaking and gambling matters?
  - A I have.
- Q Sir, will you please give the Court a general description of the nature and the strategy of a gambling policy operation?

A Yes, sir.

To commence the gambling or numbers or policy organization, there is a general heirarchy involved, a sort of a pyramid type of organization.

Some organizations are organized more intricately than others. They start at the bottom with the bettor who selects whatever numbers he wants to bet upon and places this bet with a person who is most often called a writer, and this writer, normally the writer himself does the writing and writes it down on some type of paper. It may be a small

19 20

bit of paper or a pad. Oftentimes carbon copies are maintained for the various levels of the hierarchy.

The bets then are gathered together by this writer and the money and the bets commence being transmitted up the line.

Most commonly several writers will get their work, it is referred to, together in a central location and the money and the recorded bets are usually transported thereafter separately in order to avoid being arrested and both items being there at the same time. Particularly the recorded bets, then, are collected oftentimes by a person called either a pick-up man, a collector or runner who goes about picking up the work of numerous writers at various locations and this may go through the hands of several collectors, but finally it gets to a place where the individual is most usually called a controller and his job is to essentially control the operation of these various runners and writers below him.

At his location oftentimes, the recorded wagers are tabulated because this controller will, as the pay-offs are being made and the money filters down again at the end of the day or the beginning of the next day, it is his responsibility generally to see that the various writers receive their money and receive whatever paper work they need

2 to have.

In turn, the writers can pay off the bettor. These controllers then, and this varies from operation to operation, there may be a number of controllers, then transmit finally the documents of these recorded wagers, whatever adding machine tapes that are prepared, finally to a place that is often called the bank or possibly the numbers office.

It is the main office of the operation and at this point all the work is tabulated again, compared and at the end of the day when the winning numbers are selected, it is determined which bets are winning bets and then arrangements are made to funnel the pay-offs back down to the bettor or if the money hasn't been transmitted up to the bank at that time, various receipts are made so that the money is available to the bettor for his pay off.

That is generally the structure of a typical numbers organization.

Q Sir, I will hand you--

MR. FRIEDMAN: These should be exhibits now. I will refer to them as exhibits since your Honor accepted them, subject to the objections of counsel.

THE COURT: All right.

Q I hand you Government's Exhibit 6A which relates

Well, generally speaking, 6B is what appears to

be a rather large quantity of money.

The items of the four envelopes comprising 6A are various policy type of records. Would you like me to gen-

Q Yes, sir.

erally refer to the type?

A There is particularly a large quantity of accounting records in this specimen or this exhibit, the type of records showing how much various accounts—how much betting has been received by various accounts, how much is owed?

THE COURT: Can you give me an example what you are referring to?

THE WITNESS: This is generally an accounting record.

THE COURT: Referring to an envelope with a long list of numbers and letters or words next to the numbers dated Monday May 29.

I have looked at do have a stamped date on them. There are a great number of adding machine tapes. Most of these tapes bear a stamp. They also then bear a handwritten number of coded account designations. These account designations may be numbers assigned to the various accounts or they may be first names or last names or initials, to identify the

writers accounts.

tion of either the pick up man or the collector as M. It refers to the Brooklyn and the New York number. I found in these various items that two numbers were being bet upon. The New York number was obtained by a combination of the paramutual results of a New York race track. I think in most cases it was Belmont that was running at the time.

This was by using the paramutual results of the first race, the first five races and the first 7 races to obtain the three-digit winning number.

The other number they refer to in the specifications is the Brooklyn number and that was taken from the total paramutual number for the day.

The first three digits to the left of the decimal point were used to form that number. This indicates a winning bet on number 967. There appears to be written a five cent claim and paid off 27.50. That is the rate of 5.50 for one. The designation in the left corner would refer to the writer or the person who obtained the bet in the first place, being N-16 and N-21. This would show that this M being the controller would be entitled to \$55 to pay off his people below him.

These are typical of the type of records I found

in here. There are also I think, several notebooks with looseleaf pages. These bear the stamp date at the top of it Monday that begins the week.

The policy week is considered to be Monday through Saturday, a six-day week. This particular accounting book has an abbreviation for the day of the week and starts--it has for the week of Monday, May 29 and goes through part of Thursday, June 1 and shows some accounting records for various accounts and I think the latter part of the book it has similar kinds of records for full wager weeks from April 3 on.

Again showing the amounts of money--the amounts, the total amounts of bets for these various accounts. There would be a page for each of several accounts, then he would show an amount of hits or winning bets. Then in most of the columns two show a net figure, the amount that would have to be collected from the person who wrote the accounts.

There are numerous records of this nature in this specimen.

A number of the records, various records are in envelopes and the envelopes bear the designation for the controller, or at least the runner, the person turning these various envelopes in.

THE COURT: In what way?

M.

| -

THE COURT: You mean it is written on it or printed

THE WITNESS: This packet all bear the designation

THE COURT: You mean it is written on it or printed on it?

envelopes are dated. This is a typical way of transmitting either recorded bets as they come up the line, more or less at the beginning of the day. They may also be used to transmit money that way and at the end of the day when the various accounting tabulations are then forwarded down the line, they may be used for that purpose too.

I think in most of these envelopes are what is called hit slips. That is, again, slips showing winning bets. The designation for the bettor—the designation for the controller who is to get this then down the left—hand column, the designation for the writer or the person who is finally to get this hit slip then notations as to the winning numbers bet upon and how much was bet and the final payoff.

This particular slip is dated Tuesday, May 23 and shows a total pay off to these various accounts of M of \$3,354.

THE COURT: On the basis of your experience if there was a hit of \$3,354, would it be your opinion that

the gross that day was in excess of \$3,354?

THE WITNESS: Not necessarily for that reason.

Because they paid off in this operation from 450 for one to

550 for one. That wouldn't necessarily be an indication by

itself as to the amount being bet.

I was able from these, from the various accounting records showing comparable days, I was able to arrive at the amount of money bet on certain days.

THE COURT: Were you able to arrive at what you believed to be the actual amount?

THE WITNESS: Yes, on the basis of these accounting records. I find here in this envelope a similar type of book showing various dates, various accounts and amount being bet on those various days.

This book is sectioned off into the various different collectors in the operation.

For instance G-400. I have already referred to M as being in the position of a collector or controller who controls a number of other accounts.

THE COURT: On the basis of that, what did you find the gross to be and as of what date?

THE WITNESS: The representative days, particularly using the records in this envelope which also bears our designation of Q-2.

1!

He would be above the level of the person who was

THE COURT: That is the envelope that also has the identifying exhibit number attached to the 6-A.

MR. FRIEDMAN: Yes.

THE WITNESS: All of these four I am referring to also bear 6-A and the quotation Q-2.

For the controller designated M, we took a tabulation on May 22, 1972 and found that M's gross wages, that is, the wagers of the accounts controlled by him, was approximately \$8,600. Slightly in excess of this. These also indicated that accounts under him, the writers were paid a commission of 30 per cent of the gross wagers.

THE COURT: Somewhere along the line here I think we slipped away from answering the question, the specific question that invoked your analysis.

That is, assuming that Exhibit 6A and 6B which is the money were found in the same location, what would be your opinion as to the significance of that combination, and you started telling us what 6A was?

A This necessarily, the type of records that were found particularly comparing 6A and 6B together, this location would be used, or the person who had it, one or the other, would be functioning what is most often called a controller.

a writer of the bets because there are records of numerous

writers and numerous accounts and he would be somewhere up

Most generally called a controller where he controls a number of people underneath him, a number of pick up

This would be my opinion of the function of either the place where these were taken or the person who had custody of them.

MR. PRIEDMAN: Your Honor, for purposes of this examination, maybe Mr. Harker could step down and the items will be placed in front of him.

THE COURT: All right.

people underneath him.

MR. FRIEDMAN: Your Honor, I am handing to Mr. Harker grand jury exhibit number 11A.

THE COURT: Grand Jury Exhibit?

MR. PRIEDMAN: Excuse me, Exhibit A which consists of RRILA which consists of three books; Exhibit 11B consists of certain slips of paper also marked 11A and 11B are five stamps, your Honor.

THE COURT: Maybe we could renumber those later exhibits after we have finished the hearing and we will advise counsel otherwise it might be a little confusing.

Are the date stamps exhibits 11A and 11B?

25

o Sir, have you examined this material before?

24 A Yes, I have.

nalia was seized.

Q Would you please state what the nature of the

location would be where these items were found?

-...

as Exhibit 6A and B I just described. That is, they are numbers of accounting records. In addition, in this group of items there were a rather large quantity of actual recorded wagers themselves, particularly in the large bags described as 11E and-both of them. A number of actual betting slips, but generally the type of records here are those of a nature

That is, it shows work from numerous writers. It also shows work--it shows the existence of numerous controllers.

that would be in the possession of a person or at a place

above the level of a writer.

It shows many of the same controller designations, code designations for these controllers which were the same. In fact I think they basically were the same as the items I have described in 6A for the same controllers.

Many of the designations for the writers or person underneath the controller, these accounts were also the same.

I found certain overlapping money amounts in addition to the fact there were a number of the account designations which were the same. A number of the money figures on comparable dates were the same.

Q You are saying they were the same as 6A and 6B?

A In some instances—the things I found that were comparable to 6A and 6B were these various definitions for the accounts. Particularly the accounts of showing the controllers.

THE COURT: What kind of designation?

THE WITNESS: The designation for the various controllers, M400,300, I think 100. There was an account higgs that appeared frequently. George, I think. There were about four or five accounts of controllers that appeared to be in one central group, that I found in most of the specimens, together.

It wasn't possible in most instances to find overlapping figures because of the fact these items apparently were seized at a different date. That is, they bore different dates and they weren't comparable so we couldn't just compare figures.

Q Did you make any computations as to monetary figures for this specific location?

THE COURT: Are you looking through your notes?
THE WITNESS: Yes, I am.

A I don't find I did total up this group any particular day.

Q Sir, I hand you Government Exhibit C, which are photographs relating to 77 Broadway. Does that change in any

Sir, with respect to 77 Broadway, Exhibits 6A and

By going through all these specimens and picking out the wagering that applied to that date, I came up with the figure of approximately \$15,760 for June 1st, 1972.

21

22

23

24

25

THE COURT: Let me be sure I understand that. You found papers there which in your opinion on

existence of others?

22

23

24

25

THE WITNESS: It seemed to me some of these accounting records had other controller designations on them.

THE COURT: Than M, for example?

22 23

And you are saying there were some records that had another letter?

THE WITNESS: That is my recollection. The bulk of them were for him. I would suspect—it would be my opin—ion that these records would be found in the possession, very likely of M. Many of the materials that I looked at I could see that this designation M, and this held true for several others of these collectors, operated in several capacities.

For instances, M would be a controller. M appeared to have records of other controllers plus M you would find is a writer.

This was so in several of the controllers, this person would function in several capacities.

THE COURT: Have you ever been told who the Government believes them to be?

THE WITNESS: Yes, I think so.

THE COURT: Has that influenced your opinion in this matter any way?

THE WITNESS: The name means nothing to me. I found some of the records that equated M with a first name or the name Mike. Several pages would have M on it and Mike would also be written on there.

THE COURT: Have you been told anything other than that?

THE WITNESS: I have been told of a defendant by the name of Mike.

THE COURT: All right.

#### BY MR. FRIEDMAN:

- Q Sir, are you testifying there were some policy records that you saw that had Mike written on them?
  - A Yes.
- Q I hand you Government Exhibit number 5, which consists of four envelopes and it relates to 354 Washington, the search in which it is alleged that Frangello was present.

Would you please examine those and tell me if you have examined those before?

- A I am sorry, what location?
  THE COURT: 354 Washington.
- Just please examine them, sir, at this time.

  THE COURT: The only question at this time is whether you have seen the contents of those envelopes before?

THE WITNESS: It is necessary for me to relate them to my own designations to be able to determine that.

- Q To clarify matters, I do not believe you examined those at the FBI Laboratory, but examined them on Friday.

  You have no report on it?
  - A Yes, I recognize these items.

Would you please tell me what the nature of those items are and where they would be found in a policy operation or what places they might be found?

A This exhibit consists of four envelopes containing various items. One of the envelopes contains several adding machine tapes showing the amount of bets received, amounts paid out in winning bets, previous balances and so forth then comes down with a net figure—

THE COURT: The adding machine tapes, how can you tell they have to do with betting?

THE WITNESS: These particular, they have code designations on the side having to do with the various contracts. These tapes have to do with two accounts known as Fred Master and account 100. These are account designations that I found for control. These designations 100 and Fred, I found to be controllers from some of the other exhibits.

THE COURT: Do you know what EXP means?

THE WITNESS: That would mean an expense of \$100 was deducted for some fixed expense. It could be salary, room rent, something of that nature.

THE COURT: We don't have to speculate.

THE WITNESS: It is a deducted item and would be an expense. That is a description of the adding machine tapes.

A Most of the other items are actual recorded bets such as these on various sizes of papers are the wagers themselves.

THE COURT: Five means \$5?

THE WITNESS: 5 means 5cents, ten cents, 15 cents, 20 cents. Some of these bets are combination type bets.

For instance, this bet on 144 has a box around which is sometimes referred to as a box bet on each of the permutations or ways in which that number can be arranged.

THE COURT: 441 or 144?

THE WITNESS: Yes. That is a total bet of a 1.80; 3.60 on that bet.

These bets have on them notations of winning bets someplace on the sheet. This would indicate——I think each of these have such a notation on it, would indicate that these are sometimes also referred to as hit slips.

That is, they are slips just bearing winning bets that are used to certify to the writer, to the account that there are winning bets and that these need to be paid off.

This is the type of material—I also see some horse bets in here, in some of these papers. This is the type of material that one could very well expect might be in the possession of a writer himself or possibly the controller

 on this individual.

This individual would be somewhat lower in the chain than the items I previously described.

of the writer. I expect this type of thing, particularly

chain than the items I previously described. It is not the detailed accounting records that was found in the other two locations and instead there was found a quantity of betting material, betting slips themselves, so in my opinion, the person having these at or at this location would be possibly a writer or some step immediately above where a number of writer's material are collected.

THE COURT: Mr. Friedman?

BY MR. FRIEDMAN:

MR. WALL: Your Honor, with respect to Exhibit 5,

I will move to strike references to horse bets and ask that
any indication of horse bets be withdrawn.

MR. FRIEDMAN: I have no objection to striking it.

THE COURT: All right. Any reference to horse bets in Exhibit 5 will be withdrawn.

MR. ANOLIK: With respect to the letter M. meaning Mike, that is pure hearsay and I move to strike that as being binding on my client.

THE COURT: I will grant your motion. I asked it solely for the purpose of trying to ascertain whether the

witness was influenced by the fact that one of the defendants

I hand you Exhibit 9A relating to 199 South

were both present at the locations, at least it is alleged

In Government Exhibit 9A marked on the outside of

This consists of three large envelopes. Two of

Street relating to Mr. Washington and Mr. Harrison who

has that initial.

envelopes.

they were both present.

the envelope is Q 12, Q 13 and 36.

1

6

7 8

9

10

11

12

14

15 16

17

18

19 20

21

23

24 25 the large envelopes have smaller celuloid envelopes stapled to them.

THE COURT: The entire exhibit consists of what?

MR. FRIEDMAN: Three large envelopes, two small

MR. WALL: Might we have the stipulation number or the Exhibit number that makes reference to this exhibit?

MR. FRIEDMAN: 42.

I hand you additionally Government Exhibit 9B which is part of the same seizure. That consists of one large celuloid envelope with asmaller celuloid envelope stapled to it.

I hand you Government Exhibit 9C which is also part of the same seizure and it consists of two small celuloid envelopes stapled together.

sir?

I ask you have you examined these items before,

A Yes, sir.

THE COURT: How do you know you have examined them before?

THE WITNESS: In most cases I recognize the little tab that was placed in there in our office when they were initially examined and then when I looked at them again last Friday, I verified the existence of these tabs. Many of these specimens also have the handwritten initials of the examiner who initially examined these items.

T4 p.m.

rkwh 1

Harker-direct

Would you please state what those are, Identify them in the nature of the location that would have such items?

The bulk of this material are recorded bets such a as 9-C. Several of these bets, for instance, the ones in 9-C, are carbon copies. There is also a used carbon present.

This is the typical type of notebook used, this type of pad, 3 by 5 pad with accompanying carbons, is typically used to record bets by a writer or the person who takes the bet from the bettor initially so that eh has two copies.

THE COURT: How does he know who placed a bet? THE WITNESS: In some operations, the bettor himself is given one of the copies that are made so the bettor himself has a record, but most typically, it is just simply a matter of memory.

On occasion, naturally, the bettor's name or some designation is written on the bet itself, but mostly the writer who takes the bet knows who his people are and most oftentimes relies on the bettor coming around. He knows that this particular writer took the bet because he puts his designation on it so when the winning bet comes back to him, the payoff comes back to him, frequently he waits until somebody comes and claims they had a winning bet that day and pays him off.

1

#### 5

4

### 6

## 7

#### 8

#### 9

#### 10

# 11

# 12

# 13

### 14

### 15

### 16

#### 17

# 18

## 19

# 20 21

#### 22

#### 23

#### 24

At that level, it is usually a fairly disorganized -- there is no real control and most often to be sure that the bettor does have a record of his bet.

This characterizes in general the items found here.

There were particularly a number of items here at this location or from this person, whatever, bearing the designation 007.

THE COURT: Isn't that James Bond's number?

THE WITNESS: Yes. It also appears to be a writer in this case. There is also a limited amount of adding machine tapes which would most likely indicate that these items were found at the location of a writer himself, at that level, who would have these items.

I also found in one of these items a tape dealing with an account referred to as XXX, showing the amount of items, the amount of wagers, either handled by this writer or if he is not a writer, a controller of several other writers for the date of June 8 of a figure of \$794.03, and this same total was found on one of the accounting records in Exhibit 11.

At least in another exhibit. This same total for that same account, XXX was found there.

Q What is the nature of the location that had all

861a

1

those exhibits --

3

4

5

6

7

9

10

11

12

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: He said it would be likely it would be that of a writer?

A This person I refer to is a writer, could have some writers underneath him, but at least it would be on that level rather than more of a supervisory level.

Oftentimes, it is difficult to establish precisely the various levels. I can usually have an opinion it is above a certain level or below a certain level, but not precisely what level.

Q 23 Gidney Street, Newburgh, New York, Exhibit 15-A. I hand this to you. It consists of one large celluloid envelope and one smaller sized celluloid envelope.

I also hand you Government's Exhibit 14 which relates to the same seizure which consists of a bag stapled with a celluloid envelope and a second celluloid envelope and ask you whether you have examined these items, sir, and if so, would you please state what they are, the nature of the location where they would be found?

I have examined these items. I would characterize these as very similar to the previous exhibit I discussed as being several recorded bets, many of which are carbon copies. There are several bunches of small envelopes of the types that are used to transmit the bets of a particular writer

or account. These envelopes bear a code designation of the account on the outside such as 008, 007 and within them are the bets or carbon copies of bets.

This generally is the type of material you would expect to find on some level of the operation above the writer level, that is, showing several accounts of writers, this might expect to find either in the possession of a controller of a number of writers or at most, a person would pick it up from a number of writers, who has the function of massing several accounts, but there is not a lot of detail of the accounting records at this location.

Q Sir, I hand you Government's Exhibits 1-A and 1-B.

1-A consists of a subject divider. 1-B consists of one large
black record book and ten smaller notebooks.

I hand you government's Exhibit 1-D which consists of a sheet of white paper.

I hand you Government's Exhibit 1-E which consists of six photographs stapled together.

I hand you Government's Exhibit 1-C which consists of a bag of policy work. All these items were received from the Bobbin Inn on January 26, 1971.

Have you had occasion to examine those?

- A I have.
- Q Would you plese state what is the nature of the

#### Harker-direct

location in your opinion where those items were found?

A The bulk of these items are more of the recordkeeping or the accounting type of records rather than recording
bets themselves. It would be my opinion that these items
would be found in a location where records of numerous controllers are kept.

There were, for instance, the sheet designated

1-D with a sheet labeled Newburgh, and it gives a list of eight
accounts which by reference to this sheet and similar sheets
at other locations, it would be my opinion that these eight
individuals or accounts are controllers.

This particular sheet list these accounts as 3XXX,

George \$100, \$400, Brooklyn and after each of these control
ler's designations in most of these instances, is a list of

writers who would be underneath or controlled by this par
ticular controller.

Then out in the left-hand margin is a list of payoffs, payoff rates that the people underneath the various controllers would get.

For instance, fork was being paid off at the rate of 550 for one. Pigs, 450 for one.

THE COURT: If you bet a dollar, you would get \$550?

THE WITNESS: Yes. The rate of \$549 for one, et cetera. This's a list of the controllers, what their payoff

1 rkwh 6

# Harker-direct

rate is and the various accounts or writers that they are controlling: Most of these same controllers are found in these various other small notebooks contained in 1-B.

There are in some of these notebooks, separate pages for each of these various controllers listing by various dates and most of these pages bear a stamped date on them listing the amount of wagering that would be handled by that controller for that day.

There were particularly, four, five or six controllers that were mentioned in this book, then there was some separate books that had to do, apparently with individual accounts who might be controllers or might be volume writers. There was perhaps a separate book for them that was maintained separately than these other books that generally had to do with several controllers.

In my opinion, this type of material would be found in at least the level of a controller. It would seem to be a higher level than a controller because there are accounting records of numerous controllers contained in these various notebooks.

Q I hand you Government's Exhibits 10-A and 10-B referring to 94 Garden Street.

10-A is a single celluloid envelope. 10-B is a large celluloid envelope plus one larger celluloid envelope

### Harker-direct

2 stapled together.

Have you examined these before, sir?

A Yes, I have.

Q Sir, would you please tell me, please describe what the nature of these items are, sir, and where they would be found in a policy operation?

A Among this group of materials, there are adding machine tapes listing several accounts. These accounts listed, there are maybe ten or 15 accounts, would be writers. This type of tape you would expect to find in the possession of somebody above the level of a writer who either controls these various writers or at least has a responsibility disseminating the tapes for these riders.

Also there are some wagering slips themselves.

I also found what is referred to as a tout sheet which based on numerology suggests various numbers that a person ought to wager on.

This type of record I would feel would be in the possession of someone who is above the level of a writer who would be controlling several writers under him or at least a pickup man going in between these levels.

MR. FRIEDMAN: Your Honor, this relates to Lawrence Johnson, these exhibits.

THE COURT: The last one?

MR. FRIEDMAN: Yes, 10-A and 10-B.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

2

5 6

7 8

9

10

11

12

13

14

15

16 17

18

19

20 21

23

22

24

25

Mr. Harker, I hand you trial exhibit number 12 and this relates to material left in a telephone booth by Mr. Cuzzo on 8-29-72.

Sir, I hand you this exhibit which consists of two medium-sized celluloid envelopes inside a larger celluloid envelope and ask you whether you have examined that exhibit and will you please tell us what it is and where it would be found in the operation?

THE COURT: Before you do that, when you say this is material, Mr. Friedman, that relates to what Mr. Cuzzo left, I take it you mean this material that the government contends that Mr. Cuzzo actually did leave?

MR. FRIEDMAN: Yes, your Honor.

A I have these items before.

THE COURT: What would you consider them to be and where would you normally find them?

MR. WALL: Your Honor, may I find out what stipulation refers to this?

MR. FRIEDMAN: No. 42.

This exhibit consists of several envelopes. Many of them are dated bearing either the controller or the writer designation with various notes attached to them and inside of several of these envelopes are betting slips, which would indicate that these betting slips, most of them are carbon copies, which would indicate that these betting slips

### Harker-direct

what is called overlooks or slips where there is a contention whether or not they have a winning bet on them or not.

The various envelopes and the various slips show about a dozen different accounts so that this material, particularly in view of my understanding that had been found in a phone booth, most likely would be in the process of being transmitted down the line --

MR. FARRINGER: Your Honor, I have to object to this. I don't think this falls within the competency of an expert.

THE COURT: I will sustain that objection.

I don't think you were asked that. I think you were asked not to comment on where they actually were found, but where you would ordinarily expect to find such material which you just described?

betting slips are either hits or overlooks and most of them appear to be carbons in many instances, it would be my opinion that these carbons would be found at a location either in the possession of a controller of these various accounts referred to here or someone in between the main bank and the controller or between the controller and his various accounts.

THE COURT: It is generally at the controller level?

1

3

4

5 6

7

8

9

10 11

12

13 14

15

16

17 18

19

20 21

22

23

24

25

THE COURT: I think that is all we need to know.

I hand you Government's Exhibit 13-A and ask you if

you have examined this before?

THE WITNESS: Yes.

It relates to an envelope found on Robert Peters on 8-29-72?

I have.

Would you tell us the nature of that envelope and where it would be found in the operation?

This envelope dated Tuesday, August 29 has a notation on the outside and the paper itself gives a list of writers account designations together with amounts either owed to these accounts or by these accounts. It would be amounts owed to or by these accounts. I recollect on this slip, this sheet of these accounts, of these writer accounts a number of them that appeared in the other specimen, GCCC and XXX and a bunch of accounts numbered from 90 up into the hundreds as being accounts I had seen in the other specimens.

This in its limited form is a type of accounting record showing amounts owed to or by these various accounts and I would expect to find this envelope in the possession either of a person who controlled these various accounts or at least in the possession of one who is a pickup man going in between these various levels. That is, it is generally in

rkwh	11

# Harker-direct

869a

the nature of a controller area.

Q Have you had occasion to compare the exhibits that you just testified to about, Exhibits 6-A, 6-B, 11-A through -E, 5, 9-Athrough -C, 15-A and 15-B, 1-A through 1-3, 10-A through 10-B, 12 and 13-A; have you had occasion to compare all those exhibits together?

A I have.

Q Do you have an opinion as to whether they are part of the same or a different operation?

A I do.

Q What is your opinion, sir?

A My opinion, over all, all these items would be part of the same operation.

Q On what do you base that opinion?

A In general, of course, the betting information, the type of accounting records follow the same format which is not a surprise. That is, they use the same type of bets, the same method of obtaining the winning number, but the more specifically in the bulk of the locations that I examine material from, there were overlapping or common code designations for the writers and particularly common designations for the controller of writers and in a number of instances where the dates were overlapping, where there are comparable dates, I was able to find the same figures for the same code designations in the various different materials that I was involved

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	

25

11

rkwh	12	Harker-direct/cross

-- that I was informed, at least were obtained from different locations.

Finding these common figures and the common designations throughout the whole material, it would be my opinion that they were part of the same organization.

MR. FRIEDMAN: No further questions of this witness, your Honor.

THE COURT: Mr. Farringer?

### CROSS EXAMINATION

### BY MR. FARRINGER:

Q Mr. Harker, let's see if we can get some terminology straightened out here.

When you are talking about policy, there are as you have indicated a number of different levels of people who participate in such an operation; isn't that true?

A Yes, sir.

Q You have, for instance, what you have referred to as pickup people, right?

A Yes, sir.

Q Would it be fair to say from your experience that a pickup man very often is just a person who really delivers what you call work which would be policy slips and perhaps even money from one level of the operation to another?

A

1

3

4

5

6

8

9

10

11 12

13

14 15

16

17

18

19

20 21

23

22

24

25

Yes.

- Isn't it true that with writers, they then have to deal with somebody else, as a rule, that as to say, a writer collects the money and he will put it into a bank; isn't that so?
  - It depends on how many layers the heirarchy has. A
  - Or he might go through a control? Q
  - He normally transmits it some other place. A
  - That is what I wanted to establish. Q

A writer, if he collects in a day a hundred dollars, he gets a commission off of that, isn't that so?

- A Yes.
- Isn't it true that that commission can vary from 20 percent, 25 percent and in some instances, even 30 percent?
- That is pretty generally what they would get, sometimes more or less.

THE COURT: Do they just take that off the top and send the money up?

- That is a good question.
- Isn't it true, when they collect a hundred dollars, they take their commission right out, don't they, as a rule?
- It comes off of the top. It may be done by a bookkeeping entry at the end of the day so if there are payoffs

1 rkwh 15

2

3

4

5

6

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

### Harker-cross

and so forth, this is all balanced by bookkeeping records.

THE COURT: If you were just starting the first day and you took in one hundred dollars, the writer would keep 20 or 25 dollars and send the rest up?

THE WITNESS: That percentage would come out of there.

Q Let's assume that it is being done on a cash transaction day by day without a complicated credit system. When he got the hundred dollars and he would take his \$25 and he would give \$75 to somebody else; isn't that so?

A Yes.

You are familiar with the statute we are dealing with, about five people who conduct, manager, supervise, et cetera?

A Roughly, yes.

Q In this business of policy, there are certain decisions that have to be made. By way of example, the orders vary, don't they, from place to place. So many people pay five hundred to one, others pay 550 to one and others pay 450 to one.

A To be perfectly accurate, it is 450 for one.

Q That is what I meant to say, for one. But it varies, the odds?

A Yes.

rkwh	16
TWAT	- V

### Harker-cross

Q We will put over here in terms of decisionmaking process, you have the orders, don't you, that is something
that has to be determined by somebody in some policy operation,
isn't that true?

A Yes.

Q So before we leave that, the writer has nothing to do with the orders, that is set by somebody else?

A He might well barter with the people above him and try to get better orders or less orders.

Q In most instances from your experience, Mr. Harker, you know that the writer has very little to do with the setting of the orders?

A Probably not, that is true.

Q Number 2, have you heard of cut numbers?

A Yes.

Q A cut number is when a policy bank is concerned that maybe one number is going to be hit, let's say five hunded or 219. They will before the day, before the action is taken, they will mark that number cut and it may be cut in half where you get only half your orders on that; isn't that so?

A Yes.

O The wirter has nothing to do with, for instance, determining cut numbers, does he?

A The work he generates may well precipitate the

# Harker-cross

cut number. The fact that he may have a lot of action on certain numbers may precipitate the fact that the number is cut.

Q No question, but he has nothing to do with the decision-making process? Doesn't it happen this way, he is told on this particular day, word comes down from above, anybody who writes 219, they are only getting half odds; isn't that so?

A That would generally be the way.

THE COURT: I take it the number is always cut before the bets are taken?

THE WITNESS: The same number is cut day in and day out in most cases.

THE COURT: For a period of time until it cools off?

THE WITNESS: Yes, certain numbers are regularly cut.

Another manner of decision-making involves which number you are going to work with, the Brooklyn number or the New York number. The Brooklyn number you told us is the last three numbers of the Paramutual handle whereas the New York number is arrived at in a much more complicated fashion?

A Yes.

# Harker-cross

- Q The writer doesn't have anything to do with who ultimately sets whether they are going to work on the Brooklyn number or the New York number, does he?
  - A Generally speaking, no.
- Q In terms of his percent, this is an amount that is negotiated --

THE COURT: The writer's percentage?

MR. FARRINGER: Yes.

- Q The commission he is going to get but when it comes right down to a wire, if the people he is going to deal with are adamant that they are only going to pay 25 percent, his options are to go either some place else or accept the 25 percent; isn't that true?
  - A Yes.
  - Q So we will mark this commission.

Isn't it true in terms of the writer and his players is kind of an independent operation, to this extent, that writers, you know from your experience will sometimes look for a better deal. That is to say, if they find out in their community, let's say Rockland County or Westchester County, they find out there is another bank paying 30 percent, or if they are getting 20 percent, they are paying 25 percent, it is not uncommon at all for the writer to take his players and go to another bank; isn't that so?

	5//4
1	rkwh 19 Harker-cross
2	A Yes, it does.
3	Q All that involves as far as he is concerned, he is
4	picking up the work every day, writing the numbers and taking
5	the numbers, all he has to do is a practical matter is put his
6	work into another operation?
7	A That is frequently done.
8	Q In other words, the writer, then, the writer is
9	pretty much an independent agent or contractor, isn't he?
10	A I am not sure of that characterization.
11	Q He is not tied to anybody?
12	THE COURT: Let's say he is as free as you have
13	indicated.
14	MR. FARRINGER: Right.
15	Q He is free as I have just indicated, that he
16	could take his customers to anybody he wants to?
17	THE COURT: The witness agreed with you.
18	Q Would it then be fair to say that in terms of the
19	bank, which is up here, and there can be a number of them, you
20	can have Bank A, Bank B, Bank C and Bank D, if we think of
21	that as the illegal gambling business, as it were, that is
22	defined in the statute and I don't want to get into that with

you, but if we think in terms of the bank as being the boss,

as it were, he has nothing to do with owning their business,

23

24

25

does he?

#### Harker-cross

MR. FRIEDMAN: I object. It calls for a conclusion of law.

THE COURT: This witness might possibly be able to answer that.

MR. FARRINGER: Could I rephrase the question?

THE COURT: He is a lawyer and he is a specialist in this business, but I really think it is argument. Whatever he says I have to draw my own conclusion on it.

Q Let me ask this general question.

From your experience, does a writer in the normal course of events, does the writer own any part of the gambling business?

MR. FRIEDMAN: I object again. It is the same question.

THE COURT: I don't think it is the same question.

Whether in the normal experience a writer can own a part of
the bank and he may indicate to the contrary.

I will allow it.

A I think in the common terms of what we understand "own," no.

Q And you have told us in terms of the decisionmaking process here with at least four important decisions
that have to be made, normally he doesn't have anything to do
with the decision-making process, does he?

3

4

5

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: I think we have gone over that.

I am sorry to intrude at this time, but as I told you gentlemen earlier today, that there is a meeting of a Board of Judges starting in two minutes.

Mr. Farringer and defense counsel, could you give me some idea about how long you think your further cross examination might take?

MR. FARRINGER: Your Honor, I had planned about a half-hours cross examination. I think I have gone through 15 minutes of it. I would hope not more than 15 or 20 minutes.

THE COURT: What about you other gentlemen?

MR. ANOLIK: Your Honor, I don't think we would use up among us an hour.

MR. LANNA: I don't plan to use any at all.

Mr. Farringer, I think is really covering a lot of the work for all of us.

THE COURT: The reason I am asking these questions is not just to adjust my own schedule, but if it were possible, without absenting myself from the meeting to get Mr. Harker back to Washington.

Do you plan to go back this evening?

THE WITNESS: I certainly would if I could.

THE COURT: Let's try to move ahead.

MR. FARRINGER: I will try to move ahead with dispatch.

### BY MR. FARRINGER:

880a

- Mr. Harker, you have told us a little bit about controllers. Really, a controller is not much more than a graduated writer. He has a number of writers that bring work to him. He is an intermediary between a writer and a bank; isn't that so?
  - A He si intermediary, all right.
- Normally what a controller does, we put him up here and we will mark this controller, what the controller does is, he has a few writers that bring work in to him; isn't that so?

MR. FRIEDMAN: Your Honor, I would object and ask that the witness be allowed to answer his question.

THE COURT: I thought he did answer when he said he was in between. That was the last question and now we have another question.

Isn't that what you said?

THE WITNESS: Yes, sir.

- Q In other words, if I can ask you this, Mr. Harker and I am only trying to conserve time; the controller in a sense has many of the features as the writer does, he works on a percentage too, doesn't he?
  - A He may or may not. Oftentimes, he is salaried.
  - Q Oftentimes, he works on a percentage? In other

operation, say to -- say the same way to a certain degree in

25

1	rkwh	2

### Harker-cross

bookmaking operation, you have a lot of people who work within their own sphere as it were, the writers were their players, the controllers were his writers; isn't that true?

- A I should think so, yes.
- Q Then you have a bank which deals with a number of these so-called independent agents; isn't that so?

A I wouldn't characterize them as independent agents, but they do have a bank --

- O Whatever their freedom is?
- A Yes.
- The bank is usually the boss, if I can use that term, the bank is the one who normally sets the odds, sets the cut numbers, sets whether it is a New York number or Brooklyn number and sets the commissions, as a rule; isn't that so?

A Yes.

Q This other category of people that we have been talking about, pick up people, that kind of run-around between these various operations within an operation, they are normally salaried, aren't they?

A Yes.

Q They get a flat amount of money for doing really what you might call ministerial tasks, that is to say, assuming for the moment they are acting strictly as a pickup person, they get the work, take it here, take it back and run as a messenger service?

1	rkwh 25 Harker-cross 883a
2	A A very trusted type of messenger service.
3	Q But it is strictly administrative.
4	THE COURT: There is no discretion involved?
5	THE WITNESS: No, there wouldn't be any discre-
6	tion.
7	THE COURT: I suppose if you see a cop coming, you
8	are supposed to have some discretion?
9	THE WITNESS: Yes.
10	MR. FARRINGER: I think that is all the questions
11	I have.
12	BY MR. WALL:
13	O How many policy operations have you investigated
14	or had to deal with the prosecution of during your career?
15	A About how many?
16	Q About how many separate policy operations?
17	A I suppose well over one hundred, maybe more.
18	Q Are you able to tell us approximately on an averag
19	how many controllers were involved in the average policy
20	operation that you had to deal with?
21	A The administrative structure varies greatly from
22	organization to organization, from locality to locality.
23	Frequently, there is nobody in that status that you would cal
24	a controller. Maybe many officials would have no such
25	person. Maybe as little as a couple up to maybe a dozen or

xx

so.

It would be awfully hard to make an average because

they vary so very greatly depending on the structure of the organization.

THE COURT: It is like asking how many officers a corporation has.

THE WITNESS: Yes, that would be very similar.

Q So you have had experience with operations that have had as many as a dozen persons in the function of controller as you described it today?

A Yes, sir, and that is a very broad term, controller.

The controller may control maybe one or two accounts. He is largely controlling an area rather than accounts, so that has to be a real broad term, controller.

Q And you have had, I gather from your testimony, experience with operations that have had nobody in that status?

A That is correct.

Q In those cases, the writers go directly to the bank?

A There is usually a person who is referred to either as a runner or pickup man or maybe collector who purely simply picks the things up and transmits them to the bank but really doesn't control anything, he is more of a conduit, messenger type thing then go directly to the bank.

rkwh	27
rkwn	41

### Harker-cross

MR. WALL: If your Honor will bear with me a moment.

(Pause.)

MR. WALL: No further questions.

MR. FARRINGER: May I ask one other question?

THE COURT: Yes.

BY MR. FARRINGER:

Q When you testified that certain materials you identified here would ordinarily be found in the possession of a controller or perhaps a writer; do you remember giving that answer on a number of occasions?

A Yes.

- One of the reasons, being completely candid with us, that it was hard to tell between a controller and a writer is because of the similarity, is that not so?
  - A I am not sure what you mean by similarity.
- Q Similarity of the records. It could be a controller but on the other hand, it could be a writer if he had an awful lot of players; isn't that what it boils down to?

A That may be the case. In general, it is just not always possible to absolutely fix the area.

THE COURT: As I understand what your testimony is, is that a controller has a somewhat different function, however, from a writer. First of all, he doesn't take bets,

886a

is that right?

2

1

3

4

5

6

7

8 9

10

11

12

13

14

15

16 17

18

19

20

21

22

23 24

25

THE WITNESS: The indications were in this particular case that the same person, maybe a writer, may be a collector, a controller, he may be on several levels himself.

THE COURT: So an attorney may be dealing in real estate too, but he is doing that and to the extent he is an attorney, he is doing that.

THE WITNESS: As he functions as a controller that doesn't involve writing bets.

THE COURT: As I understood your testimony, the controller handles a larger number of accounts than the writer because he handles usually the accounts of several writers; isn't that right?

THE WITNESS: Yes.

When you said, and maybe this is often, when you said this would ordinarily be found in the possession of a controller or in the possession of a writer; do you remember making statements with respect to certain exhibits that would ordinarily be found in the possession of this person?

> A Yes.

Wouldn't it also be true from your experience, if a man is a pickup man and carrying controller records, he could be arrested and have controller records in his possession, isn't that so?

rk	h	2	0
IK	MII	4	7

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

# Harker-cross

	A	Yes.	In most	cases,	I	tried	to	indicate	that.
It	could	be the	controlle	er himse	11	E			

THE COURT: I understand that. Just as a Wall Street messenger could be found with thousands of dollars of securities that are not necessarily his.

MR. FARRINGER: No further questions.

MR. LANNA: No questions.

MR. PANZER: No questions.

MR. ANOLIK: One question

### BY MR. ANOLIK:

Q Isn't it quite possible that in a metropolitan area such as Yonkers or places of that sort that there would be several separate policy operations going on in that city at the same time?

A Yes, quite possibly.

Q And they might have well been overlapping a particular geographical area, isn't that true?

A Yes.

MR. ANOLIK: No further questions.

MR. BLACKSTONE: No questions.

MR. BELLANTONI: No questions.

THE COURT: Mr. Friedman, any further questions?

### REDIRECT EXAMINATION

# BY MR. FRIEDMAN:

You referred to trusted messenger. Could you

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

23

54

25

1

2

4

5 6

7

8

9

10

11

12

14

13

15 16

17

18 19

20 21

22 23

24

25

please tell me, is there any correlation from your experience, is there any correlation between the time at which an individual is carrying the policy work and the degree to which he is trusted by the organization?

THE COURT: You mean the length of time or the time of day?

MR. FRIEDMAN: Time of day.

MR. FARRINGER: Your Honor, if I understand the question correctly, I don't think he is competent to answer that question. Trusted, whether he is trusted or not?

THE COURT: He may.

THE COURT: He is competent to answer. Whether he can answer is another matter. I don't know whether anybody can answer it. Do you have an opinion as to whether there is correlation between the degree of confidence normally imposed in a runner by his superiors and the time of day in which he makes his run?

THE WITNESS: It makes a tremendous difference.

THE COURT: Would you explain what you mean?

THE WITNESS: If numbers bets are being transmitted to the office or some higher location by a pickup man, runner, and by the rules of the organization, they have to be in the office by a certain time, maybe twelve o'clock, the reason for such a rule --

# Harker-redirect/recres

THE COURT: Are you talking about twelve noon?

3

1

2

THE WITNESS: Twelve noon or one o'clock; 1:30.

4 5

(Continuing) As in this case, the winning number is determined on the outcome of various races and most often

If, for instance, a person was transmitting these

6

the various betting information, particularly the betting

7

slips must be in this some trusted office by a certain time

8

for it -- for the obvious reason that anybody in control of

9

them, is the number starts to be developed could as his own

10

winning bets in, sometimes loosely referred to as past-

11

posting.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

various betting materials later on in the afternoon, or even into the evening, it would be necessary to put a little trust in the individual because, for instance, it might be in the evening when the number had already been determined and if he wasn't trusted in some manner, he could insert winning bets of

MR. FRIEDMAN: Thank you.

No further questions.

MR. WALL: Recross, please.

RECROSS EXAMINATION

BY MR. WALL:

all sorts.

Q The pickup man that you told us about, is the fact he is a pickup man wouldn't keep him from being a trusted

23

24

25

MR. LANNA: Whenever you get around to it.

THE COURT: Is the whole thing going in?

MR. FRIEDMAN: I intend to offer the whole thing.

THE COURT: I will read as much of it as I can

by tomorrow morning.

Mr. Farringer, you have the Buffalo look on you.

MR. FARRINGER: I don't. Tomorrow I have to be in the U. S. Court of Appeals for the Second Circuit.

THE COURT: What time?

MR. FARRINGER: I am first on the calendar and I don't really think it will take much time. I don't have to be here when the other gentlemen are arguing but I would certainly like to be heard tomorrow.

THE COURT: Let's start at ten o'clock. Mr. Farringer, perhaps you can be here then and leave a few minutes before ten-thirty, but we will get you in some-how.

MR. PANZER: Might I be excused until 10:30 tomorrow? I have something before Judge Canella at 10:00 o'clock.

THE COURT: Who is your client?

MR. PANZER: Mr. Peters.

THE COURT: Mr. Peters, would you come up here.

Mr. Peters, Mr. Panzer has to be absent tomorrow morning until 10:30. Are you satisfied to allow Mr. Lanna to represent you at that time?

MR. LANNA: Your Honor, tomorrow 25 I understand will be in the nature of arguing legal motions more than anything else. Do you want the defendants all here?

3

4 5

6

7

8

9

10

11

12

13

14 15

16

17

18

19 20

21

23

22

24

25

THE COURT: I am perfectly satisfied that any defendant need not be here if he is not already in custody providing he specify at this time his willingness to be absent from the proceeding tomorrow. There will no further witnesses?

MR. FRIEDMAN: There will be no further witnesses, but the government would respectfully request since it still is part of the trial that if a defendant intends not to be present that he expressly states he waives it on the record.

THE COURT: That is what I intend to do.

will you raise your hand, gentlemen, any of you not in custody who wishes not to be here tomorrow magning.

THE COURT: Mr. Johnson, you want to give up your right to be here tomorrow morning?

DEFENDANT JOHNSON: Yes.

THE COURT: Mr. Washington, do you wish to give up your right to be here tomorrow morning?

DEFENDANT WASHINGTON: Yes.

THE COURT: Mr. Harrison?

DEPENDANT HARRISON: Yes.

THE COURT: Do you wish to give up your right to be here tomorrow morning?

Mr. Gerald Politi, Mr. Anthony Politi, do you

desire to be excused.

Mr. Weis wishes to be excused.

Whoever it leaves, it leaves and as long as they are in custody, I assume they prefer to be here than at West Street, but if they don't want to be here and wish to indicate their desire not to be here, they can also, of course, be excused.

Hearing no further requests, I assume they do not wish to be absent.

MR. FRIEDMAN: Does your Honor intend to have written briefs?

THE COURT: We will discuss that tomorrow morning.

(Adjourned to June 12, 1973 at 10:00 a.m.)

-1		WTWNPCC TWN			94a
2	Name	WITNESS IND			
3	Name				Recross
4	R. Phillip Harker	34	71	88	90
5		EXHIBIT IND	EX		
6	Government	Iden	tificati	on Evi	In lence
7	24 through 43				33
8					
9			•		
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25	-				

UNITED STATES OF AMERICA

895a

vs.

73-56

4 ANTHONY POLITI, et al.,

Defendants

New York, June 12, 1973 10:00 a.m.

THE COURT: I have decided that although only

Mr. Farringer, Mr. Anolik and Mr. Blackstone are here today,

together with government counsel, that I would proceed at

four minutes after ten to hear whatever argument those

counsel wish to put before me, and I will deal with the

case of other defendants when their counsel arrive.

MR. ANOLIK: Mr. Wall is here, your Honor, I see Mr. Wall.

wish to state at this time? You raised a question yesterday about whether I wanted to have memoranda. Unless there is some substitute for a memorandum by the government, namely a coherent description of what you believe the stipulations that are now in evidence establish, together with the expert's testimony yesterday and, of course, the exhibits themselves, I would like to have a memorandum which puts all the ducks in a row, because it is an awful job otherwise.

If that is satisfactory to you, then there is no need, I suppose, to make an oral presentation of that kind at the present time. Is that the way you wish to proceed?

MR. FRIEDMAN: I think that would be a better and

MR. FRIEDMAN: I think that would be a better procedure.

THE COURT: Then under those circumstances, I am prepared to hear anything defense counsel wish to put before me at this time, but they would also have an opportunity to put in writing what they believe are the defects in the government's case vis-a-vis their own defendants, whether it is a matter of law or a matter of fact.

On matters of law, I would like to hear your views, however, at the present time, since you are here, and give me some background as to what you think the legal issues in the case are, if any.

Mr. Farringer, I know you have to be upstairs, if you can finish your presentation before you go, that will be fine.

MR. FARRINGER: Thank you, your Honor. The matter that I think lies on the threshold of this case, and one that your Honor has not really had much advice on up to this point, and for that reason I would like to at least alert you to the legal issues, and then with your Honor's kind permission, I think it might be helpful to the Court if

2

3

4

5

6

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I supplied to the Court a brief which I could get to you promptly giving you the case and authorities. My purpose today is just merely to outline the problem.

Your Honor, I think we have in this indictment a very, very serious defect, which reaches jurisdictional proportions and will require you to dismiss it.

The government here has charged, unique only to this case, as far as my experience with the SEction 1955 prosecution, they have charged a violation of Section 225.05, which is the traditional statute involving promoting gambling, and, it is in the conjunctive, the indictment reads that the defendants have violated that section and SEction 225.15 which is purely a possessory statute. That statute, paraphrasing it, simply says that any person who possesses those records commonly used in the game of policy or the scheme of lottery are quilty of a misdemeanor, assuming it is not ten of his own plays.

If you read Section 1955 carefully, as I know you have, that statute is uninhabited by any words that even suggest in the slightest fashion that a mere possessory offence brings the defendant within the clutches of that statute. By that I mean, if you read the section, your Honor, and I won't take much of your time, just to simply comment on gambling clues, but is not limited to pool, selling, bookmaking, main-

7 8

taining slot machines, roulette wheels, and so on and so forth.

So that Congress has defined the concept of gambling and then they say if you were engaged in an illegal
gambling business, which violates a state law -- here is common
sense. I cannot believe, your Honor, that it was the intention of Congress to bring within the scope of this statute
five or more persons who may possess ten or more policy
plays.

The legislative history is addressed to the syndicated operation of large gambling enterprises which have a wide scope. The obvious suggestion is going to be that the government -- your Honor, you can disregard that section and restrict yourself solely to the promoting section. But I don't think it is as simple as that. We have an indictment here that was returned by a grand jury. I don't think the prosecution is in any position now, since it was returned by a grand jury and voted by a grand jury, is in any position to alter that indictment.

If the indictment includes as part of the charges that these men stand facing here in court a statute, a crime that was never intended by Congress to come within the scope of that statute, then it seems to me, your Honor, under an unbroken series of cases stretching over a long history of this court and the Second Circuit, the indictment

is defective and must be dismissed. What I would like to do, your Honor, I am collecting some cases on that because this was something that really came to my attention as I got more deeply into the case, I would like to supply you with --

THE COURT: If you are right, it could have saved an awful lot of trouble at an earlier time. But, as happens, you may not be right.

MR. FARRINGER: That's always a possibility.

There's another question here, your Honor, that is of crucial concern to me. That has to do with the failure of proof on a critical element that I believe under the New York law must be established as part of the government's case.

I know I need not tell you that we have an unusual situation here. What you have in effect is a statute that says if five or more persons violate a state law, then they come within the federal jurisdiction and can be punished under federal law.

That means, of course, at this juncture we really have to go to the state cases that say what are the essential elements of proving a promoting lottery. For this argument, I am disregarding, of course, the possessory aspect of the offense charged.

The Abelson case, which, incidentally, on this point, your Honor, I have prepared a brief because I had

intended to raise this in the prosecution's case, so if I may, your Honor, I will hand my brief up to you and give one to the government — the Abelson case, what might be really called the Watershed Case of gambling in New York State, it is a Court of Appeals decision and a landmark decision, there they set forth all of the essential elements which the prosecution must prove in a gambling case. One of the things they stress is that where you have an offense which has as its basis reliance on some contingencies happening, whether it is a horse race of whether it is a baseball game or whether it is parimutuel numbers, you must prove the incident.

of course, I must confide in your Honor and tell you that most of the law in this area has been made in areas where they have to prove the horse race ran. It is a well-established regime of law in New York State, I see no exception to this law. Our position is that the prosecution as a part of this case, they usually do this through an expert, they produce the newspaper which has the parimutuel results and they show on those days they claim people promoted lottery that there was a parimutuel figure on that day.

If a track were closed down, I think, your Honor, that this is unlikely, but it is at least possible, if a track has closed down because of labor difficulties, because of a

snowstorm, because of rain or what have you, and there was no parimutuel number on that date, then there could not be any policy on that day. So the law in New York State has always been that they must establish the event.

I give you what I think are the relevant authorities.

As a matter of fact, because of the difficulty in establishing that, a number of years ago, the New York legislative tried to remedy it and say, well, they can bring in a widely circulated newspaper that shows the parimutuel results or shows the horse race, and that will establish a prima facie case.

would like to give to you on the proof of possession. In

New York State, your Honor, there is a host of cases which
hold that in any of the gambling possessory cases, the

possession has to be proven conclusively, and that is their
language, conclusively. I have given you a collection of
cases there that are unimpeachable that hold that where men
were in the same room, one classic situation that is alsmost
identical to our own here, four men are in a college and they
find a lot of policy slips, the Court said that doesn't establish that any one of them possessed those slips, unless you
can establish direct actual physical possession.

That won't, I have to say to your Honor in all candor, apply to the case where the man is arrested and he has the slips on him. But the instance, your Honor, where it

is in automobiles, houses, cottages, apartments, even if the apartment is registered in the name of the man, that's the New York law, and it seems to me those cases deserve the hospitality of this Court because we are really deciding a New York legal issue.

Since I have assembled all of those cases in a brief, I won't discuss them with you any more than that. My time, your Honor, is rapidly expiring because I don't want to disappoint the Second Circuit. Let me say this, that in the requests to charge that I have supplied to you, I have indicated and will indicate on the record that those requests, 4 through 15 that primarily have to do with conducting and what constitutes the elements, as we view them, of a 1955 violation, should apply.

Your Honor, as I examine the rest of my requests,
I would not like to withdraw that. I am sure you are going
to apply these rules anyway. I made some requests on circumstantial evidence and what proof beyond a reasonable doubt is,
so if you have no objection, I would like to stand on asking
all of these principles be applied. But I have to tell you
frankly that on the question of conducting, I think the
government has a different view on that. So for that reason,
I would like to make it clear on the record that we are
asking you and applying conducting to this case -- but that

3

1

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

you accept our interpretation of that term which has received some judicial approval.

One thing I have to caution about, your Honor, the Second Circuit has had occasion to review two of these cases where that was a prominent issue, the interpretation of conducting. I must caution you, your Honor, that in both of those cases, they were bookmaking cases involving an entirely different type of operation, where you have a clerk sitting in an office who, of course, exercises a great deal more authority than perhaps a pickup man does. For that reason, in my requests to charge, Request No. 9, I have set forth in a footnote there what I consider to be some terribly important legislative history wherein discussing policy the legislators said "We never meant this to cover mere runners, but only the persons intimately involved in" what I will call the banking operation, although they don't use that term.

To that extent, I commend that to your attention. I am sure the government is going to cite the Becker and Fiorella case wherein both of them, bookmaking case, the Court took a different view.

I would like to renew all of the motions made, particularly the one where we said you can't charge the men with conspiracy and the substantive offense in the same count.

That has been rejected by the Second Circuit, but I think it is important since those cases are before the

U. S. Supreme Court. We renew that here. I also say if other defendants prevail on the double-jeopardy argument and the indictment were dismissed against them, if you were to accept their claims, then, of course, we think that might affect the rest of us if that reduces the number to less than five. Other than that, I would like to have the privilege of submitting a brief to you, and if you will allow me to include any additional arguments that I may have overlooked in that, I would welcome it.

THE COURT: Yes, I will, Mr. Farringer. I think we ended informally yesterday and that the government never indicated formally that it was resting, which we all assumed that it did. Am I correct in assuming that, Mr. Friedman?

MR. FRIEDMAN: Yes, your Honor, although the government offers that transcript which is already in the stipulation. The government did rest.

any motion at that time. They can make them now if they wish, but I will in any event regard the situation as if they had moved for judgment of acquittal at the end of the government's case. This will be regarded as a combination of summation, if there is any reference to facts, and legal argument at this time.

MR. FARRINGER: Your Honor, may I be deemed to join

little overlapping, but I think your Honor can certainly

appreciate it. Regarding the defendant Anthony Politi and aside from the stereotype motions to dismiss, your Honor has already indicated you would accept them so far as the motions are concerned, not the decision, I would like to bring to your Honor's attention just a few things which were submitted by the people as possible exhibits. I am going to take those which I consider to be least important from the standpoint of deep argument first and then get onto the double-jeopardy issue which quite frankly I think your Honor is already aware might be something of substance.

Yesterday, the government put into evidence or offered into evidence a stipulation relative to Acrel Simon.

If I just may allude to it for a moment and direct your Honor's attention to this, there they are discussing a conversation which initially took place in 1968 between Mr. Anthony Politi and this person whom I believe is called Acrel Simon.

We would move at this time that that not be accepted into evidence so far as those portions dealing with the 1968 feature, if for no otherreason than it falls far without the scope of this indictment which alleges, as I recall, a period of September of 1970 through approximately December or January of 1973.

THE COURT: Mr. Friedman, what's the theory on which the 1968 conversation with Mr. Simon was offered against Mr. Politi?

7 8

MR. FRIEDMAN: Your Honor, the 1968 conversation is offered on the theory that it is evidence of other crimes, of the relationship and conception of the conspiracy --

THE COURT: I don't see how you can talk about the conception of the conspiracy in 19 -- at least it seems rather strained to talk about it in 1968. You charge only 1970.

Perhaps not.

As I understand it, your major contention has to do with the evidence of other crimes as being evidence of intent in this case, is that correct?

MR. FRIEDMAN: And, your Honor, solely as to the existence of the relationship, also, of Mr. Politi with Acrel Simon and with Eddy Washington during that period of time and also with Allan Handler.

THE COURT: During which period of time?

MR. FRIEDMAN: 1968 which carries over to a later time. We have a meeting in 3-21-72 between Anthony Politi and Allan Handler and Arthur Frangello and some of the testimony of Acrel Simon goes to explain and show the relationship between Anthony Politi and those individuals. So that to that extent, it is relevant and probative of the crime charged in the indictment.

THE COURT: I can't rule on your motion at this time, Mr. Lanna, but I have your views in mind and I have

the government contentions --

22 23

MR. LANNA: I don't really subscribe to the theory which they are attempting to put in, I think it is for an entirely different reason. I leave that with your Honor.

THE COURT: I recognize that the government could have proposed some evidence of this kind for the purpose of influencing the trier of fact on an irrelevant basis. I hope as a judge or jury that won't happen.

MR. LANNA: I leave that for your Honor to decide.

If I may, I will touch upon a second issue here, and that
has to do with the alleged conversation in connection with
the statement of the police investigator, Raymond Shaw, in
connection with Anthony Politi, for which you received transcripts yesterday.

THE COURT: I haven't read them in full. I read part of them.

MR. LANNA: Addressing myself to that, I feel that certain areas which are not included in the stipulation and which I did discuss with Mr. Friedman last week -- but I am certain that he just innocently overlooked them, because I did remind him of it yesterday -- should be brought to your Honor attention.

Pirst, that assuming such conversations did take place and they are alleging in October of 1970, we don't in

1

any way, of course, verify the truth or certify as to the truth of that particular period. There seems to be nothing which

4

3

5 R1

verifies that.

6

7

i)

10

11

12

13

14

15

16

17

18

19

20 21

22

23

24

25

But, in any event, this was not brought to the attention of the government prosecutor, as I understand it, until about ten days or two weeks ago. I perhaps am being a bit courteous in that regard, because he brought it to my attention, I think, at the beginning of last week or the end of the week before.

THE COURT: You mean the existence of the tape?

MR. LANNA: Yes, sir. The existence of anything,
but certainly the tape.

THE COURT: I mean the existence of a reporting of the conversation?

MR. LANNA: Yes.

MR. FRIEDMAN: The government will stipulate that the existence of the conversation did not come to my personal attention until a week ago, a week before -- approximately eight days before the trial was to start, your Honor, and then within approximately four days of it coming to my attention, I did notify Mr. Lanna.

THE COURT: I don't think Mr. Lanna is criticizing you for your personal behavior. He is raising a question of whether regardless of your personal behavior this material

was admissible under the circumstances described.

MR. LANNA: Also as to the weight of it. I think it is odd that a person who has been involved in this investigation since at least the early part of 1970 has never told the prosecutor as to this particular --

ment, Mr. Lanna, but if you wish me to take it seriously -not if you wish me to take it seriously, but if you wish me
to take it as seriously as you might, and you feel that the
evidence contained in the conversation which, by the way, I
haven't, as I said, read, only the first 50 pages, is a significant factor in determining Mr. Politi's case, I think
we ought to ask Mr. Friedman to let us know who the people
were who were in charge of the situation and you are entitled to question them.

I don't want to go on your hunch that it is odd.

I would like to find out whether there is a decent explanation for this material not having come to Mr. Friedman's attention up to now or not. We are all getting to be little Judge Byrneses I suppose, but if it is in issue, I think it ought to be aired.

MR. LANNA: I think this could be ofercome if Mr. Friedman for the record would make certain representation?

THE COURT: I would be glad to proceed by that

lhwh 17

-

3

4 5

6

7 8

9

10

11

12 13

14

15

16

17

18

19

21

22

23

24 25 route too, if he has at least enough information. This is not a matter on which he obviously has first-hand knowledge. Would you tell us what you understand to be the reason for delay in bringing this material to your attention and to the attention of everyone else?

MR. FRIEDMAN: Yes, your Honor. It is my understanding, I have been informed that Mr. Shaw and the state police intended to follow --

THE COURT: Mr. Raymond Shaw?

MR. FRIEDMAN: Mr. Raymond Shaw, the investigator who had the conversation, intended to follow up on this situation and to possibly prosecute Mr. Politi for this situation in following up the subsequent meetings with Mr. Politi and to keep it as an open investigation.

part to keep the existence of the conversation to themselves until they had made a policy determination as to whether or not they were going to -- there would be a need to keep it secret any further.

MR. FRIEDMAN: Yes. They didn't want to share at a certain stage of the investigation — they didn't want to share it with the federal government. That's what I have been informed is the situation. Eventually, when I did find out, I requested the use of the tape recording and the

1

2

3

4

5

6

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

conversation and that's how it came about.

THE COURT: Are you prepared to accept that representation, Mr. Lanna?

MR. LANNA: I am prepared to accept that representation as being fair and accurate. I would ask your Honor to take into consideration with that, I think that that decision simply is a prosecutor's decision rather than an investigators decision. I would ask your Honor to take into consideration that some two and a half years passed from its inception, that this very witness, Shaw, Ray Shaw, testified under oath on two separate occasions, that is during the preliminary hearing which was conducted after the arrest in the Bobbin Inn in the state court and here before your Honor, about six or eight weeks ago, in a suppression hearing, and I am sure Mr. Friedman would concede this, that he did not know on the evening of January 26 of 1971 when he entered the Bobbin Inn, the identity of anyone except Michael Roman. So it just doesn't strike with me that one should be committing a crime, in effect, and I allege without any refutation that this was purjurious on each occasion, to overcome what in his own particular mind he felt should be kept from the authorities.

THE COURT: I am not quite sure I understand what you say what was perjurious?

MR. LANNA: He alleged under oath -- assuming this

conversation with Politi occurred in October of 1970, then
when he testified on February 1 of 1971 in Rockland County,
under oath, and also again in March, I believe it was, or
April of 1973 before your Honor, and we have extracted from
each of those transcripts where he denied knowing the
identify of anyone but Michael Roman on the night that he
entered the Bobbin Inn, that is January 26 of 1971, some three
or four months after this alleged conversation with
Politi --

THE COURT: I take it you wish me to believe his statement in the evidentiary hearing and to disbelieve the testimony that's in the transcript, is that it?

MR. LANNA: No, not necessarily. I am just going to ask that your Honor attach that as to whatever weight you are going to give this allegation that such a conversation took place, for example, in October of 1968.

We might say, we are not denying such conversation --

THE COURT: I don't think that's the right date.

It wasn't October of 1968.

MR. LANNA: Excuse me, of 1970. I am going to ask, if your Honor chooses to complete reading it, of course, you have read some of it, not having a jury it doesn't concern me, quite frankly, the allegations of investigator Shaw as

pointed out in the stipulation which is attributable to him deal with this recording and the transcript which the government has made from it, and then adds certain items which are not founded in the transcript regarding an alleged bribe, an alleged payment of money, alleged other conversations, which cannot be found within the transcript.

If you read that transcript carefully, and I did, and it took me a few hours, just a few days ago, I find nothing which would seem to indicate any off-the-record, or if you would like to call it, or off-the-transcript conversation, such as -- and your Honor will read the stipulation, it indicates that, for example, Shaw in his discussions indicated how much was he going to get for his cooperation, and Politi either raised fingers or wrote it out on notes, and so on and so forth.

This is all well and good, except it is not in the transcript, and yet there is nothing within those transcripts which would seem to indicate that such conduct took place. Those transcripts throughout don't indicate, for example, well, what are you going to do to take care of me. which might indicate that perhaps something took place in writing or with fingers, or what do you mean by the three fingers, or anything of that nature throughout the entire lengthy transcript.

I ask your Honor to look at that. However, if you read that transcript very carefully, it leaves me with but one impression, which I suggest to your Honor is the truth, and I also suggest to you that that's why it was so long in coming about, Mr. Shaw spoke with Mr. Politi and spoke — and sought to have Mr. Politi act as an informant. There is no question about it as you read through there, because he was looking to make arrests in that county as to other type policy people or gambling people.

The only time they referred to money, it was Mr. Shaw. He kept saying, you know, I don't make a lot of money, I have a wife and two or three children, I have a mortgage, we have an old car, he just kept talking about arresting a particular individual, but I won't mention his name here, your Honor can read that, and he would like to get the bag of money because that money might be of some assistance to him. Nothing regarding Politi giving him the money. I also recall one other comment about money. He kept talking about his mortgage and the fact that he didn't earn too much money, and Politi made one remark which doesn't seem to at all coincide with at that same time offering him money.

He said, look, if you are really in that bad a spot, and I am paraphrasing it now, he said I will give you a loan. This is the only remark from Politi, and it just does

7 8

13,

not seem to coincide with the fact that he is at the same time bribing him, making up a \$1,000 a month arrangement, because what does he have to give him some money for a mortgage or loan, so far as I am concerned, it just doesn't seem to arrive at that conclusion.

going to now touch upon the double-jeopardy issue which I think is a very real sincere issue in this case. We will submit to you, I am going to rely on my good friend Mr.

Anolik, if your Honor has no questions, because, as you know, I am going to be leaving in a few days, and I don't want to delay it, and, on the other hand, I don't want to have to be put under the gun so as to give you something which is incomplete --
Anthony Politi, along with several other defendants, was tried under a similar type indictment before Judge Gurfein in January and February of 1972. That indictment was 71 Cr. 857.

It just so happened that in connection with that indictment the allegation or the conspiratorial period was ostensibly I think February of 1971 through May of 1971.

However, during the course of the trial on two separate occasions, and these are contained within your Honor's stipulations, Judge Gurfein permitted testimony as of September of 1970 and also transactions in October and November of 1970 regarding betting which took place. I certainly

1hwh 23 117 917a

feel that as a matter of law, this expanded that particular period, although I don't know how important it is so far as the double-jeopardy issue is concerned.

In addition, I think that you have to consider here the affidavit by investigator Parkhurst on that Bobbin Inn search warrant where -- and this goes back to January of 1971 -- where he describes the geographical area of their investigation. He describes Westchester, Rockland, Putnam, Duchess, Orange Counties.

What I am really trying to get across to your

Honor, and I think you can probably see the picture, if there

were a gambling conspiracy going on in which Mr. Politi

and Mr. Weis and several other defendants were involved,

it existed certainly in September of 1970, it covered the

seme geographical area as that which covered the indictment

in 1971 and the indictment in 1972, which is presently before

your Honor.

It just so happens that the bulk, not all, but the bulk of the evidence, the hardest evidence, the gambling evidence, in the indictment before Judge Gurfein was, you might say, Westchester type arrests, whereas the bulk of the evidence in the case at bar happens to be, you might say, Rockland and Orange County type arrests.

But when you take the Bobbin Inn work, as is

pointed out in these stipulations, and some of the work
taken from the defendant Peters when he was arrested in
connection with this on August, I believe, 28 or 29, 1972,
and you sit down, as we have, and as the government has
stipulated and conceded, there is an overlapping regarding the
coded agent numbers. I think in the area the government
concedes of 24. I submit to your Honor that there are even
a few more than that. I don't think that's too important.
You have got 24.

THE COURT: 24 what, accounts?

MR. LANNA: 24 runners or riders. Also, there are controllers, similar controller designations. Also, some of the work found in the basement relative to the defendant Cuzzo coincides with work from the 1971 indictment. When you take this and match it up --

MR. FRIEDMAN: I am sorry, your Honor, I didn't so stipulate as to the Cuzzo work.

MR. LANNA: You didn't stipulate it, but it is there. I will withdraw it. I don't think, frankly, it makes that much difference. If your Honor please, when you take this overlapping, the fact that the conspiracy existed at that time, which includes the very same areas as this case, the fact that in the 71 indictment before Judge Gurfein and the 1972 indictment before your Honor had common defendants and certainly common co-conspirators, they don't have all the same,

but between the two indictments, there are eight common coconspirators -- it just so happens that two of them were acquitted in the last trial. One of them happened to be nollied because of his heart condition, and for that reason he didn't continue on.

Another one, in fact, Mr. Cuzzo, who is an original defendant in that case, was discharged after the hearing before the magistrate. You see, I think it is inescapable that we not only have the same overall conspiracy, but the same people involved. I think it would be folly for us to say, well, there were two separate conspiracies. The evidence, the investigations, the backgrounds, the similarity in the coded entries, the type of, as you heard the expert yesterday, the type of computations, leave but one inescapable conclusion, there was one conspiracy existed in 1970, in September of 1970, and as the government alleges continued on until December or January of 1973, sandwiched in there was, of course, the 1971 indictment.

They didn't have a conspiracy before that, then dissect it and have one following that. It just isn't possible. Your Honor will winder, why should the government have included this and exposed itself to such a risk? I suggest this to your Honor. When these arrests took place, when I say these arrests, speaking of this present indict-

•

4 5

ment, the warrants and the information laid before the magistrate alleged the conspiracy between, I think, late January of 1972 and the date of these arrests, which were in June and also August of 1972, this would have been great because this actually followed the acquittal on the 71 indictment.

What caused the government at the time of the indictment to expand this period, I am not exactly certain of, except I can suggest to your Hono: this, that if you review the evidence in this particular case, Mr. Anthony Politi just doesn't fall within any of the evidence between February of 1972 and let's say August of 1972, and to include Mr. Politi in this, the government was obligated to bring this Bobbin Inn arrest into this particular indictment.

January of 1971 necessitated and required that the government expand its period of the conspiracy with an acknowledged,

I am sure -- with the assumption of risk regarding the knowledgeability that in the middle of there somewhere was an indictment that was dismissed.

Of course, as we developed, and I was certain, because I went into the transcript of the last trial, we had a similarity of evidence type, or I should say code type evidence, not because these were policy slips, but it was lower Westchester. That doesn't take it outside the conspiracy.

The government made argument that it is not the same type of evidence. I think Mr. Friedman said that yesterday.

But keep in mind these defendants aren't being charged with, for example, possession of those particular clips. They are charged here with a 1955 conspiracy --

THE COURT: Suppose there were double-jeopardy
as to the conspiracy. Would there be anything left as to the
substantive counts in this indictment?

MR. LANNA: No, sir. Mr. Anolik tells me he will pick that up. Perhaps you will hear a different voice. I think I have covered it as well as I could from oral argument.

If your Honor will permit, Mr. Anolik will submit to you on behalf of Mr. Anthony Politi and Mr. Anolik has the only other defendant who -- well, Politi and Weis, in connection with this double-jeopardy issue, and I am sure your Honor will accept that memorandum on behalf of both defendants involved.

THE COURT: Of course, I will.

MR. LANNA: Of course, I join in all of the other motions.

MR. ANOLIK: And your Honor, I think it is obvious, and we set this ground rule in advance, that all of us
are joining in each other's motions.

THE COURT: I am fully aware of that, except, of course, where it doesn't pertain, or where it does pertain,

MR. ANOLIK: Mr. Farringer and I have discussed the

law, and we certainly agree that the overall statutory
arguments he makes apply to everyone. To that extent it is
common ground.

May it please the Court, I would like to address

myself to the double jeopardy issue first, your Honor, because I think that is of transcendent importance. Within the framework of the double jeopardy issue, your Honor, I should like to also incorporate the concept of collateral estoppel. Under indictment number 71 CR957, which was the old indictment that embraced Anthony, Philip Politi, Harry Weis, Pasquale Maselli, Leartis Morris, Prank Bracey, Arthur Dilworth and John Abrams, and then subsequently incorporated persons such as Alphonse Cuzzo, Michael Roman and Robert Peters—we would ask your Honor to consider in the light of the fact that the record of the first trial, that is 71 CR 857, while it supposedly covered a period in 1971, during the course of that trial, the prosecution asked and was permitted to expand the conspiracy from 1970 to the date of that indictment.

THE COURT: Incidentally, if you are going to make any reference in your brief to such specific things as that, make specific reference to the transcript so there is no question of what was said.

MR. LANNA: We also include that in the stipula-

The stipulations themselves already contain the excerpts that I am referring to. One of the arguments which I would make with respect to double jeopardy, autrefois acquit, if it please your Honor, is that if the prosecution has taken the position that the whole is not made up of the sum of the parts, then, of course, we have an untenable argument.

I think necessarily the whole must be made up of the sum of the parts.

THE COURT: I don't disagree with that admirable mathematical proposition. I understand the Government's position is that the part you call the previous case is not part of this whole. Isn't that your position, Mr. Friedman? It may be a tough one to prove, but is that your position?

MR. FRIEDMAN: Yes. The indictments allege two separate conspiracies and although there may be common co-conspirators, that there were two separate conspiracies covering different areas.

THE COURT: Like two corporations with interlocking directorates, or something like that?

MR. FRIEDMAN: Yes.

MR. ANOLIK: Of course, your Honor, the Government then is taking the position, and I think a somewhat anomalous

4 5

22 23

position, that simultaneously several of the co-conspirators were engaged in a different conspiracy, which means that if we take that, and one of the arguments that I think we are advancing in this case is that there was not a single conspiracy at all, that this is not a chain type of a conspiracy but a spoke or wheel type of conspiracy—

THE COURT: As I understand it, you are saying if there was any conspiracy before me, it was a spoke type conspiracy?

MR. ANOLIK: That's correct, your Honor.

THE COURT: Of course you claim there was no conspiracy.

MR. ANOLIK: We claim there was no conspiracy within the purview of 1955.

THE COURT: That's a separate question, however, from whether if I find there was a chain type conspiracy, then it was the same conspiracy before Judge Gurfein or a different one.

MR. ANOLIK: Right.

In other words, unless your Honor finds it was a spoke type conspiracy, your Honor, we believe, would necessarily have to find double jeopardy and collateral estoppel, because without that theory you couldn't sustain—when I say you, I mean the Government couldn't sustain the

burden in this case and successfully rebut our argument of double jeopardy, because we maintain that since there are common individuals in both conspiracies or let's say both indictments, that without a spoke type of conspiracy, it is impossible for there to have been an indictment in this case as to those individuals.

THE COURT: I am not saying it is a matter of general principle. As I see it, theoretically you can have two conspiracies among even all the same people, for different purposes.

MR. ANOLIK: Yes, your Honor, that's true.

THE COURT: Then the question becomes one of fact as to what are the extent of the differences. If they are all the same people operating in all the same territory, all the same subject matter, at all the same time, what's the difference. This is what the Government will have to point out to me.

MR. ANOLIK: We don't think that their proof or their stipulations point that out at all. We don't think that in any way, shape or form they have sustained the burden beyond a reasonable doubt of establishing that there were separate conspiracies. The problem we have with respect to the indictment number 71 CR 857 and the instant indictment that in indictment 71 CR 857 a significent amount of

lhe 5

evidence is common to both indictments. Certainly there is an identity of several parties, one as defendants, that would be Anthony Politi, Harry Weis, Philip Politi and Alphonse Cuzzo, were certainly defendants—Alphonse Cuzzo, it is true, after a magistrate hearing was taken out of the case, and Mr. Friedman can correct me if I was wrong in that—

MR. FRIEDMAN: He was not a defendant in the indictment, your Honor.

MR. ANOLIK: The arrest. I didn't mean to say indictment. I should have said in the charges. Originally he was a defendant. Anthony Politi, your Honor, it is true, was a defendant and because—Philip Politi, and because of his illness at that time a nolle prosequi was entered.

and I believe that there are cases even in the Second Circuit indicating this, certainly the Supreme Court, Ashe against Swenson, which would be at 397 U.S. 436 and in the Second Circuit, U. S. against Kramer, 289 Fed. 2d, 909, and I don't think that was dispelled by the recent Nathan case which came down not too long ago in this circuit, and of course, Barthus against Illinois, 359 U.S. 121 and Abate against United States, 359 U.S. 187, all of those cases indicate that either as defendant or co-conspirators, the

lhe 6

doctrine of double jeopardy and/or collateral estoppel would preclude prosecution. Embraced within this, your Honor, is the Bobbin Inn incident, as I call it, which is certainly anomalous to the prosecution's case because of the fact that it is not the typical type of evidence they are trying to introduce here. It brings in an element that is clearly within the framework of the indictment upon which an acquittal was obtained.

We maintain that the Government necessarily has to litigate and your Honor would have to come to a conclusion as to the underlying facts or circumstances of the Bobbin Inn incident in order to resolve this case one way or the other.

THE COURT: How do I do that?

MR. ANOLIK: The Government, I assume, si going to establish, your Honor, that there are two completely separate conspiracies, and if they can't obviously your Honor, as the tryer of the facts, if you are not convinced beyond a reasonable doubt, youwould have to find that they are one and the same conspiracy, and then I don't think the Government could possibly disentangle one from the other.

Once there is an overlapping, your Honor, I think that you can't have, for example, just a conspiracy pro tanto.

I think if it is part of the same conspiracy, let's

7 8

say they conjoined for a period of nine or ten months, it is still double jeopardy, your Honor, because we don't know specifically what the Grand Jury selected.

On the other hand, if your Honor finds there were two conspiracies, then our argument that there are not two conspiracies but many conspiracies, apropos of one of the questions I asked of the expert yesterday--remember, I said, isn't it possible that there could be several policy operations within a given geographical area at the same time, not connected, necessarily, with each other, and perhaps having similar parties, and he said sure, that is quite common, we maintain, your Honor, that if that is the case, the Grand Jury and the Government cannot fix the five or more persons that are required to have returned an indictment herein, because then it would be impossible to disentangle which conspiracy is which, and I don't think the Grand Jury minutes would support a finding of more than one conspiracy.

Once you come into a two conspiracy theory, I can't believe, and I haven't seen the minutes--

THE COURT: There is a difference, you talk in terms of two conspiracies in what I consider a somewhat loose fashion in this context. There could be, it seems to me, the possibility of one conspiracy as charged before

2 Judge Gurfe

Judge Gurfein and another single conspiracy as charged before me, or there could be--that would be two conspiracies

proposition, and I want to be sure which we are talking about, in the ordinary conspiracy case where there is no double jeopardy problem, we also have this question of whether there was a single or multiple conspiracy. That is one of the things that you are talking about when you talk about this breaking it up into small units, so to speak, or the question you asked the expert.

That is not the same question, as I understand it, as to whether the conspiracy charged before me is the same or different from the conspiracy charged before Judge Gurfein.

MR. ANOLIK: I realize that, your Honor, but the point is this, I think that the Government has put themselves on the horns of an impossible dilemma because they cannot, winnow out that conspiracy and say, well, let's forget about that part and just look at the tail and the head and forget about the body. You can't to that.

THE COURT: You can't look at the tail and the head without the body, I agree with that. I just want to make it clear, and I think everybody shook their head in assent before when I said, when you used the words they

7 8

cannot, if that implies that as a matter of law they cannot,
I wouldn't agree. But whether as a matter of fact they
could establish what you contend they have to establish,
is certainly a question, a serious question.

MR. ANOLIK: Your Honor, necessarily the Government must concede that at least to the extent of the persons mentioned either as defendants or as co-conspirators in the indictment before Judge Gurfein, at least to that extent, they were engaged in a different conspiracy, if they are to even get to the tryer of facts in this case.

saying that there were at least two conspiracies extant during some period of time. If that is the case, we ask how does the Government establish that these were in fact two separate conspiracies, where does the Government draw the line as to the activities, for example, of Mr. Anthony Politi or Philip Politi or Mr. Cusso or Mr. Weiss or Mr. Roman, who is also named there, I haven't gone through all the names, the stipulations contains them all, how do they establish now what capacity they are operating in.

If it was a more laying off, your Homor, for example, of one group laying off a bet or policies, let's say, upon another group, that's not a conspirecy at all.

That happens all the time.

7 8

MR. ANOLIK: Let's say, for example, that a policy groups get X plus Y bets in a particular period. They are only accustomed to handling X amount of bets, the Y is too much for them to handle. They therefore lay it off on another group. They are not affiliated. For example, an attorney, referring a case to another attorney. He is not in business with him.

THE COURT: Or a stock broker --

MR. ANOLIK: That's right, or an insurance group,

Lor example, they get a \$5,000,000 policy. They will say,

well, Hartford can handle \$2,000,000, but we are going to have

to ask Continental to come in and Aetna. They are not in

business together. That's a similar situation here, your

Honor. That's what we maintain may have happened here and the

Government has an obligation to show it didn't happen.

We maintain the Government by brining this indictment, had they brought the indictment, for example, at the
termination date of the first conspiracy, their problems
would be eliminated.

They chose not to do that. They chose, and it is their operation, to have embraced the period of this indictment, the entire period of the other indictment.

Having done so, we maintain that necessarily they run afowl

lhe

of the double jeopardy and collateral estoppel prohibitions.

I think I have spoken long enough, your Honor, and I am

sure other counsel will take up what other points may be
involved.

MR. LANNA: Judge, may I make one additional comment? It occurred to me as Mr. Anolik was talking. I think the coup de grace to show here that there was in fact one conspiracy at about the same time--

THE COURT: By the word conspiracy now, make the record clear, you mean the conspiracy here and the conspiracy before Judge Gurrein were one and the same?

MR. LANNA: Yes. One and the same, and I think
the coup de grace here, and I think irrefutably, and I think
the Government would make a representation, deals with the
Bobbin Inn. The raid on the Bobbin Inn I think on January
26 of 1971 which sort of fits right in the middle of the
whole thing showed a total of, if I may use the expression,
work which dealt with Westchester, Putnam, Dutches, Rockland
and Orange County. You might say this was a central
clearing house. It covers all of those areas, and that is
how I was able to find corresponding agent code numbers for
both the '71 indictment and the indictment before your Honor,
from all of that work. I think the Government has no other
position at this time but to so represent.

| "

21 22

This covered all of those areas.

THE COURT: The evidence is there.

MR. LANNA: If it were a different conspiracy, I doubt they would all be in the same clearing house.

THE COURT: Are there any other counsel who wish to make statements?

MR. WALL: Very briefly, your Honor, the entire legislative history of Section 1955 indicates Congress didn't intend to have within the scope of that section every conceivable illegal state policy operation. That is precisely why Congress provided, number 1, not only the amount which had to be taken in in a given day or in the alternative the length of the policy operation, but specifically stated that there had to be five or more people who we can refer to as in a managerial capacity.

burden of proving beyond a reasonable doubt that there were five or more, which I translate as meaning with respect to those that one might think were in a position of managerial responsibility, there has to be proof beyond a reasonable doubt that that fact is so. What I propose to do when I submit to you the memorandum which I am asking permission to submit, is to point out to your Honor in detail from the stipulations all of those persons who are not runners, and

lhe

I think the runners are clearly without the ambit of Section 1955, for the very simple reason, your Honor, that if the Congress had intended to include people in the ambit of Section 1955 who exercised no discretion with respect to the operation of the gambling venture, then every single nickel and dim policy operation in the United States would be covered because you cannot run such a policy operation without at least five people having no discretion.

Consequently, what I want to do is point out to you with respect to those persons who on the face of it conceivably could have had some discretion, that the evidence as embodied in the stipulations with respect to those people, does not prove their managerial capacity beyond a reasonable doubt.

It seems clear to me that the stipulations will show that two or three had sufficient evidence to put them in that managerial, financing a managerial spot. I am going to suggest to your Honor that an analysis of the stipulations will show they don't reach the magic number of five, and if they don't the whole ball game is over as far as all the defendants are concerned.

THE COURT: A very attractive suggestion, Mr. Wall. Much simplier than some of the others.

MR. WALL: I knew your Honor would appreciate that.

THE COURT: Mr. Panzer, do you have anything?

3

1

MR. PANZER: No, your Honor.

4

THE COURT: Mr. Blackstone?

5

MR. BLACKSTONE: No, your Honor.

6

THE COURT: Mr. Friedman, I am not calling on you to answer all these matters, but I will certainly be glad

8

to hear anything you say. I will expect you to brief some

9

10

MR. FRIEDMAN: I will make this relatively short

With respect to Mr. Wall and Mr. Farringer's

11

and cover most of this in my brief.

of 1511 applied to 1955 and they--

of these points.

12

main contention regarding managerial positions in the opera-

14

tion, the case of United States versus Becker, which Mr.

15 16

referred to which is at 465 Fed. 2d 697, 1972 case, United

Garringer argued before the Second Circuit and which he has

17

States certiorari was denied and rehearing was denied. In

18

that case, the Second Circuit analogized or said that the

19

legislative history as to the companion statute to 18 U.S.C.

20

1955, to wit, 18 U.S.C. 1511, that the legislative history

21

THE COURT: What does 1511 cover?

23

22

MR. PRIEDMAN: It says if you have a five-man

24

gambling operation and as partof that operation a police officer or law enforcement officer is paid money, then that's

25

4 5

a violation of the law. It is a corruption statute, your

MR. ANOLIK: Your Honor, excuse me. May I interrupt to clarify one point? Becker was a gambling, bookmaking case.

THE COURT: I understood that from what Mr. Farringer said. Let Mr. Friedman bring out his points.

MR. FRIEDMAN: In Becker, your Honor, the Court interpreted the legislative history, it said, "thus, ontress' intent was to include all those who participate in the operation of a gambling business, regardless how minor their roles and whether or not they be labeled agents, runners, independent contractors or the like, and to exclude only customers of the business."

Then they went on to say, "In view of the broad construction of conduct by Congress, we find no difficulty in concluding that runners or agents of a bookmaker fall within this category, and the requirement that the business be conducted by a minimum of five persons has been satisfied."

This was a direct interpretation of 18 U.S.C. 1955, your Honor, the Becker case. With respect to the question of the two state statutes, of course, both state statutes are alleged, but I think the law is clear that although the indictment alleges it in the conjunctive, if either one of

i

those could satisfy the elements of the crime, then the proof can be in the disjunctive, your Honor, secondly, as to possession, the record is repleat with references to policy work being handed to individuals in the operation, and this would satisfy the possession requirement, your Honor.

THE COURT: I understand Mr. Farringer doesn't deny
for purposes of his motion that there may be evidence of
possession. He says possession is not a crime.

MR. FRIEDMAN: The Government, of course, would differ and we will brief that fully as to the situation. Additionally, your Honor, as to the actual business, each participant in the business does not have to actually possess the policy material in order to conform with the elements of the statute, your Honor. It is just that the business involves a violation of the state law rather than that each individual participate as members of the five are participating.

As to the double jeopardy issue, the question was set forth in cases, and the Government will brief it, but in Kramer the Court said that "Defenses are not the same for purposes of the double jeopardy clause simply because they arise out of the same general course of criminal conduct. They are the same only when the evidence required to

support conviction upon one of them (the indictments) would have been sufficient to warrant conviction upon the other."

The Government would respectfully point out that none of the overt acts in the conspiracy are identical.

Additionally, they do--

THE COURT: I must say, I think that is of very marginal importance. Overt acts are something I think that are as obsolete as appendices, anyway.

MR. FRIEDMAN: Thank you, your Honor. Anyway, additionally, with respect to the substantive offense, there are only--there are no common five people, and the Government's point and contention is that the indictments show they are different aspects, different territories that are being talked about here and that the indictments span over different areas. In U. S. versus Barcy, 433 Fed. 2d, 984, there was an overlap in time. Credit cards were involved in both conspiracies. The Second Circuit held there wasn't double jeopardy.

THE COURT: I have already indicated that I think there could be two separate conspiracies as a matter of law, and it is for the Government to demonstrate to me that the number of elements requisite for this difference exist.

MR. FRIEDMAN: Your Honor, also, and I argued this to your Honor before, and I will repeat the argument,

if your Honor were to find there is double jeopardy, and the Government strongly presses that there is not, that the indictments would not fall, your Honor, if the conspiracy existed or the business was run subsequent to May 24, 1971, which is the termination date of the alleged conspiracy in indictment '71 CR 857.

THE COURT: Wouldn't that depend on--if we came to that point, wouldn't the validity of your contention or suggestion that at least the indictment is good for the post-May 24, 1971 period depend entirely on the extent to which the record before me contains only material related to the period after May 24, 1971?

MR. FRIEDMAN: With this exception, your Honor, that as to the Bobbin Inn, as to testimony of Acrel Simon antedating the May 24, 1971—and also antedating the March 16, 1971 date of it—alleged date of conception of the conspiracy in '71 CR 857, the Government would allege that those could be admitted to show the nature of the conduct, to explain the nature of the conduct of individuals in this conspiracy, to show the association, to show the intent of the parties in what they were doing. The allegations that the 1971—

THE COURT: I must say, to be perfectly frank,

I am pretty skeptical about taking the conduct of people

prior to the original—the alleged beginning date of the conspiracy and finding that it has much probative value as to what they were doing during the period in which they were alleged to be conspiring. They might have been great buddies before that time, they might have been terribly intimate before that time. Almost by definition, it seems to me, if you say they weren't conspiring before May whatever it was, it is hard for me to understand how I can find that they were getting ready to conspire a couple of months earlier.

If you have any cases that support you, I will be very glad to see them. That is at least my innocent reaction to the suggestion.

MR. FRIEDMAN: Your Honor, of course, they could have been conspiring during a period of time--during that period of time antedating the conspiracy in '71 CR 857, and as any other times evidence is admitted, it is admitted to show or explain what the nature of the conduct is of the persons--

THE COURT: Can you give me an example in this record of what you think in the preconspiracy period indicates what they were doing in the conspiracy period?

MR. FRIEDMAN: Yes. Mr. Simon's evidence where he explains that Anthony Politi asked him to get a series

of runners and to have them all meet at a hotel, and then he held a meeting, and he told him what terms he was going to give, this is the whole set up--

THE COURT: Simon is not alleged to be a co-defendant in this case or a co-conspirator in this case?

MR. FRIEDMAN: He is alleged to be a co-conspirator in this case. I would also point out that of the 21 co-conspirators not indicted in the 71 CR 857 case, there are approximately two that are mentioned in this case, your Honor.

So there were a series of people alleged to be co-conspirators in the '71-957 which do not overlap in any way with this case. In talking about the other crimes issue, U. S. versus Delpurgatoria, 411 Fed 2d, 84 at page 86, Second Circuit case in 1969, a conspiracy was alleged and evidence antedating the conspiracy began was admitted and the Court held that it was admissible to show the beginning of the defendants involvement in a criminal enterprise and his state of mind at the time.

Also I cite to the Court U. S. versus Smith, 464

Fed 2nd 1129, and here we have a pre-enactment of the statuts,

it is a Second Circuit case, also conduct prior to the en
actment of the statute, which again is raised in here. The

Court did hold that it was admissible. They said "The prin-

cipal contention of Appellants is that since the agreement between Smith, Laurio and Clyde as well as the actual threats made against them by Clyde, all predated the effective date of the statute and hence were federally innocent, their post-statutory behavior was insufficient to establish a conspiracy to violate 894."

They said "We cannot agree."

THE COURT: I remember that case. Is that the interest equalization case? There was one like that where certain conduct occurred before the statute. It was inadmissible to show their intent.

MR. FRIEDMAN: Also the Court cites Fergara, & slip opinion--

THE COURT: You don't need to cite all the cases now. I assume you are going to do that in your brief.

MR. FRIEDMAN: Yes. I would press that there is case law that the preindictment or pre-conspiracy conduct is relevant and probative and admissible.

THE COURT: I think you are correct.

MR. FRIEDMAN: Thank you, your Honor. I will brief this.

MR. FARRINGER: Your Honor, can I just comment on the Becker case? That case may play an important part in your consideration.

7 8

THE COURT: It would sound as if it would.

MR. FARRINGER: In Becker, your Honor, which incidentally, I had that case, I have not been notified of certiorari being denied.

Government agreed that certiorari would be granted in that case, because of conflict in the circuit. That, incidentally, your Honor, is a wire tap issue case. It does have all of these other issues in it. I think the Court is holding it now, pending, sifting through all of these cases.

More important than that, what seemed to me to be crucial in the Second Circuit when we argued that matter is all of the other defendants in that case have pled guilty before trial except the two men who went to trial who obviously occupied a managerial position.

The Government, being a good advocate, made that very clear to the Second Circuit. I tell you that because I think you can see that's a significant fact. Every other man in effect said, yes, I was conducting and he pled guilty. I think to a certain extent that hasn't capped our argument.

Nevertheless, the Second Circuit did say that they were taking a much broader interpretation of conducting.

I will only say this and then I will sit down, as Mr. Anolik

pointed out, I think in the legislative history when they talked about policy operations, recognizing that in a policy operation you always have five or more, that is not necessarily so in a bookmaking operation.

There inevitably have to be people who are not included.

THE COURT: What was the character of the subordi-

MR. FARRINGER: It was bookmaking.

THE COURT: I know. I take it there were some people who argued that—you argued that the non- higher ups were not included. What kinds of non-higher ups did you have there?

MR. FARRINGER: In our situation, as a matter of fact, our only defense that we had in that case which we went to the jury on, we never suggested for a moment that the clients were on trial who were the banker and another man who occupied a high position would not be conducted.

what we tried to point out, the men were sitting in the office, accepting wagers over the telephone and writing them down and actually engaged in the business of accepting bets, we tried to argue they didn't come within the framework of conducting. We were wrong. Those men all pled guilty. They acknowledged they were guilty.

4 5

THE COURT: You take the Circuit Court's opinion to say that those kinds of people are conducting, within the meaning of the statute, as to bookmaking, that is people who take bets and write down things and so on.

MR. FARRINGER: Exactly.

THE COURT: Do you make any distinction at the present time between that kind of person and the kind of person whose activities I have described and that are in evidence before me here?

MR. FARRINGER: Yes, Judge, I think that is an incisive question. Let me try to answer it. The man who writes in an office and takes the bets is intimately involved in the operation, it is one enterprise. What you have here is, and that's what I tried to develop with the expert, you have got a lot of what I would call independent operators who were on the periphery, might go to this bank or that bank, they have their own customers under control.

I have to tell your Honor in all candor, there were in our case in the Becker case, some of those people, who, incidentally, were named as co-conspirators and did not plead guilty. That never really ended up on the Court of Appeals. In our situation in the Becker case, we really had for the most part five or more who were right inside the operation, who were working there, as a part of it.

1

3

4

5

6 7

8

9

10

11

12 13

14

15

16

17

18

19

20 21

22

23

24

25

THE COURT: Your argument, let me put some helpful words in your mouth, if you are willing to accept them, would be that the Court of Appeals said who is kidding who, that's an integrated enterprise, everybody is working together and even the lowest man is doing something meaningful, and that they just didn't treat the question of the kind of language of cohesiveness and people without discretion that you have working in the policy situation. Is that right?

MR. FARRINGER: Your Honor, again, in the spirit of complete candor, I want to tell you that one of the issues raised in the Becker case, and you will read it, and I wouldn't want you to think I was misrepresenting anything to you, there were on the outside independent agents. We tried to raise that question. The Court of Appeals did talk about the independent agents who were getting better, as it were, and calling them into the office. They lumped those in with the rest. I really think, and I can represent this to you without fear of contradiction, our operation here, a much more sprawling, independent and loose operation, doesn't approach the Becher situation.

THE COURT: Very good.

Gentlemen, I think the only things that remain are this. First of all, there are these pictures to be

7 8

. .

placed in evidence, pictures of the buildings which it is claimed were misdescribed because they contain two apartments when they were described only as one family houses.

There are four sets of such pictures. I will

There are four sets of such pictures. I will leave it to my law clerk and the parties to see they are properly marked. I think they actually should be indicated as exhibits on the evidentiary hearing on the suppression motion. I will also ask counsel to be sure that all the exhibits are in proper order so they can be put before me at the time I am considering the memoranda, and then I would like to establish a time schedule.

I have given Mr. Farringer two weeks. It seems to me that other counsel, Mr. Anolik and Mr. Wall who appear to be putting in memoranda, can do it within the same period of time.

They don't rely on each other for anything. Mr. Friedman, I think we might as well, under those circumstances, let you answer the memoranda so that we know that everybody has talked about the same thing. I will give you two weeks after you receive their briefs.

MR. ANOLIK: Your Honor, I am under one slight, shall I say, handicap, because I don't know yet what the factual position of Mr. Friedman will be on this. I think that certainly legally we can answer him. Might we have

4 5

some approach factually what he is claiming these people are guilty of?

THE COURT: It will just be a problem that is usual because of the way in which this case has been tried. Mr. Friedman, what do you suggest in that regard? I do think that Mr. Anolik raises a legitimate question. He says "I can't argue whether or not my people have been held in double jeopardy until I see what it is that you claim has been proven by them and how it differs from what occurred in the Gurfein trial."

MR. FRIEDMAN: Your Honor, the evidence is very concrete in terms of, it would seem to me, in terms of the stipulations, what is there, and I think Mr. Anolik does have a basis in which to express his arguments.

The theory of the Government's proof has been expressed here. I don't necessarily think that—I would argue and submit that he can do it on the basis of the stipulations and I will respond to him.

the COURT: Clearly it would have to be on the basis of the stipulations, that is true. I suppose if we were preparing after a normal trial, you would be on your own, Mr. Anolik, as to the evidence that was before a jury or before me and Mr. Friedman would be summing up after you sum up. I will handle it this way. If after receiving Mr. Friedman's reply memorandum to yours you feel

149 950a

that there would have to be a good demonstration, that you can demonstrate, you may put in some short reply.

I will allow that.

I think that's all, gentlemen.

(Adjourned.)

## MEMORANDUM AND VERDICT OF LASKER, D.J. DATED OCTOBER 23, 1973

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

73 Cr. 56

ANTHONY POLITI, GERALD POLITI,
PHILIP POLITI, MICHAEL ROMAN,
ROBERT PETERS, ALPHONSE CUZZO,
ARTHUR FRANGELLO, LEONARD
HARRISON, LAWRENCE JOHNSON, LOUIS
VISCONTI, EDDIE WASHINGTON and
HARRY WEIS,

MEMORANDUM AND VERDICT

Defendants.

APPEARANCES:

VINCENT LANNA, ESQ. 50 Riverdale Avenue Yonkers, New York Attorney for Defendant Anthony Politi

-----X

TRVING ANOLIK, ESQ.
225 Broadway
New York, New York
Attorney for Defendants Philip Politi, Gerald Politi
and Harry Weis

DAVID BLACKSTONE, ESQ.
335 Broadway
New York, New York
Attorney for Defendants Eddie Washington, Leonard
Harrison and Lawrence Johnson

PATRICK M. WALL, ESQ.
36 West 44th Street
New York, New York 10036
Attorney for Defendants Arthur Frangello and Louis
Visconti

EDWARD S. PANZER, ESQ. 299 Broadway New York, New York Attorney for Defendant Robert Peters HERALD PRICE FAHRINGER, ESQ. One Niagra Square Buffalo, New York 14202 Attorney for Defendant Michael Roman

GEORGE J. BELLANTONI, ESQ. 190 East Post Road White Plains, New York Attorney for Defendant Anthony Cuzzo

PAUL J. CURRAN, ESQ. United States Attorney United States Court House Foley Square New York, New York 10007 LASKER, D.J.

The defendants are charged with violating Title 18, \$1955 U.S.C. by unlawfully, wilfully and knowingly conducting, financing, managing, supervising, directing and owning a policy gambling business in violation of \$\$225.05 and 225.15 of the Penal Laws of the State of New York, involving five or more persons who conduct, finance, manage, supervise, direct and own a part of said gambling business which remained in substantially continuous operation for a period in excess of thirty days and had a gross revenue of substantially in excess of \$2,000. in a single day, and of conspiring to do so.

The case was tried without jury, and except for the testimony of the Government's expert witness as to the nature of the policy gambling business and his opinion as to the nature and scope of the gambling business charged in this indictment, the proof consisted of stipulated facts.

At trial, the defendants reserved their right to object to the admissibility of any evidence, and, at the close of the evidence, each defendant moved for judgment of acquittal. Decision on the motions was reserved.

The Government and the defendants have submitted detailed post trial briefs which I have studied with care, together

with the many stipulations of fact. Defendants object to the admissibility of the stipulated testimony of one witness, contend that the Government has failed to prove various critical facts or elements beyond a reasonable doubt, and raise a number of questions of law. I proceed to treat each of these propositions.

## Admissibility of Evidence.

Defendants object to the proposed stipulated testimony of Acrel Simon relating to two meetings with Anthony Politi in 1968, at which he talked to Politi about setting up a gambling business in Newburgh and discussed percentages and odds. The objection that the testimony relates to events ante-dating by two years the commencement of the conspiracy (September 1, 1970), and is, therefore, according to the defendants, "immaterial and irrelevant to the charges at bar".

The objection is overruled on the authority of United States v. Del Purgatorio, 411 F. 2d 84, (2d Cir. 1969), United States v. Bozza, 365 F. 2d 206 (2d Cir. 1966), and United States v. Ferrara, 458 F. 2d 868 (2d Cir. 1972), among other cases, as relevant to show the beginning of Politi's "involvement in the criminal enterprise and his state of mind at the time".

II. The Defendants Raise the Following Questions of Law or Fact:

A. It is claimed that the indictment is jurisdictionally deficient, and should be dismissed, because although the indictment charged violation of both \$225.05 of the New York Penal Law (which makes it a crime to promote gambling) and \$225.15 (which makes it a crime to possess gambling records), the prosecution at most proved possession of gambling records by the defendants. It is argued (1) that Congress did not intend that 18 U.S.C. \$1955 should reach mere possession of gambling records or receipts and (2) that, since the grand jury alleged violations of both \$225.05 and \$225.15, the Government must prove violations of both sections to secure a conviction of any defendant. The motion to dismiss on these grounds is denied.

1. As to the first point, the decision in <u>United</u>

States v. Becker, 461 F. 2d 230 (2d Cir. 1972), 232, makes

it clear that Congress intended that 18 U.S.C. §1955 should

apply "to exclude only customers of the business" and to

include "all those who participate in the <u>operation</u> of a

gambling business, however minor their roles and whether

or not they be labelled agents, runners, independent

contractors or the like --." We interpret that holding

to indicate that Congress intended that the offense of possessing gambling records (rendered unlawful by §225.15 New York Penal Law) should be included in the proscription of conducting a gambling business set forth in 18 U.S.C. §1955. See also <u>United States v. Riehl</u>, 460 F.2d 454 (3rd Cir. 1972).

2. Even if the proof of the Government were not sufficient to support a conviction of promoting gambling under §225.05 -- of which more below --, the indictment may not be dismissed if proof is found to support violation of §225.15 alone. That is, the indictment is proof against dismissal if violation of either statute is shown. Even though the indictment reads in the conjunctive, a conviction -- if beyond a reasonable doubt -- will stand if the proof is in the disjunctive. See United States v. Cioffi, Docket #984-5, 2d Cir. July 16, 1973. See also Crain v. United States, 162 U.S. 625, 635 (1896) and United States v. Conti, 361 F.2d 153, 158 (2d Cir. 1966). Russell v. United States, 369 U.S. 749 (1962) relied on by defendants, is not to the contrary, but merely sets forth the standards of particularity by which an indictment must abide. Those standards were met by the instant indictment.

- 3. Defendants contend that the Government has failed to prove the requirement of 18 U.S.C. §1955 that five or more persons combined to promote gambling in violation of §225.05 of the New York Penal Law, because
- (a) The Government failed to prove the promotion of "policy", since it did not prove that any defendant accepted policy wagers, as allegedly required by New York Law,
- (b) The Government failed to prove "conclusively" that any of the defendants possessed policy slips and
- (c) The Government failed to prove a sporting event.
- cite,

  (a) The cases which defendants/ such as People v.

  Lalli, 5 N.Y. 2d 536 (1959) construe \$974 of the New York

  Penal Law, a predecessor to \$225.05 of the present law.

  As we read those cases, however, they do not require proof of possession of policy slips. It is true that in Lalli,

  Judge Fuld wrote for the court (at 539):

"In point of fact, the statute is aimed only at the players -- that is, at those who possess policy slips -- and the entrepreneurs and managers of policy and those in pari delicto with them." (citing cases)

But his opinion went on to say:

"'Section 974', this court wrote in the Hines case, 'prohibits one from keeping

an establishment for policy playing, from delivering or receiving money by playing policy, or possessing policy slips, or other articles used in carrying on policy, or owning or being the agent or janitor of any establishment where lottery policies are sold' (284 N.Y. 93, 104-105). And in People v. Wolosky, after adverting to the Hines case, he states (296 N.Y., at p. 238): Thus, four kinds of activities having to do with policy are forbidden: maintaining a place wherein to play it, having ownership or control of such a place, handling the money involved or possessing papers, writings or articles commonly used in carrying on this form of gambling."

Furthermore, defendants are not charged with violation of the old §974 but with the current §225.05 as to which the Commission Staff Notes to the then proposed Penal Law state:

"Under the proposed Article, it would be sufficient to charge, in the language of the blanket statute (§225.05, 'promoting gambling'), that the defendant 'knowingly advanced and profited from gambling activity', and to follow this assertion with whatever factual allegations fit the particular case."

(b) I find as a fact from the evidence before me, and on the basis of relevant New York decisions, particularly those cited in the Government post trial brief at pp. 70-73 that the Government has proven possession of the policy slips conclusively and beyond a reasonable doubt. As to the statement on p. 26 of defendants' brief

that there is no proof here that five or more defendants possessed policy slips, I find: i) that the proof does establish beyond a reasonable doubt that five or more defendants possessed policy slips and ii) that, in any event, the governing statute in this case (18 U.S.C. §1955) requires proof not that five or more persons possess policy slips, but that five or more persons conduct a business in violation of state law.

- (c) Defendants rely on People v. Abelson, 309 N.Y. 643 (1956) as authority that in the absence of proof of a sporting event, no conviction may be had under the present indictment. The short answer to that argument is that Abelson construed the statute relating to bookmaking (old \$986 New York Penal Law), not, as here, to promoting gambling or possession of policy slips. The instant offense does not require proof of a sporting event since payment on policy may be based on numbers unrelated to sporting events. See People v. Kravitz, 287 N.Y. 475, cert. denied 317 U.S. 667 (1942). See also People v. Torres, 21 N.Y. 2d 49 (1967).
- (d) Finally, I agree with the Government's contention that even if it be concluded that the defendants' arguments outlined above have merit as to the substantive counts -- although I do not find that they do -- they

are inapplicable to Count One, the conspiracy count. The essence of conspiracy is an agreement to violate the law. I find beyond a reasonable doubt that all of the defendants did wilfully, and knowingly enter into a conspiracy to violate §§225.05 and 225.15 of the Penal Law as charged. Even if the object of the conspiracy were not attained -- although I find that it was -- the defendants may be found guilty of having conspired as charged.

B. Relying on Judge Burke's definition in <u>United</u>

States v. Fiorella, 1971-45 W.D.N.Y.. aff'd 468 F. 2d, 688

(2d Cir. 1972) of the term "conduct" as used in 18 U.S.C.

1955, defendants claim no convictions may be had because the Government has proven only three of the defendants may be found to have "conducted" the gambling business -- this they appear to concede -- whereas the statute requires that at least <u>five</u> persons must have been shown to conduct, manage, etc., the business.

Reliance on the <u>Fiorella</u> definition is misplaced.

First, that definition was not reviewed or approved by
the Court of Appeals. More important, it is clear that
Congress intended the term "conduct" to be given the broadest application. As stated in the House Report on the
legislation:

"The term 'conducts' refers both to high level bosses and street level employees. It does not include the player in an illegal game of chance, nor the person who participates in an illegal gambling activity by placing a bet." H.R. Rep. No. 91-1549, 1970 U.S. Code Cong. & Admin. News, p. 4029.

If any doubt on the question were to memain, the decision of the Court of Appeals in <u>United States v. Becker</u>, 461 F. 2d 230, 232 (1972), disposes of it:

"Thus Congress' intent was to include all those who participate in the operation of a gambling business, regardless how minor their roles and whether or not they be labelled agents, runners, independent contractors or the like, and to exclude only customers of the business." (Emphasis in original)

See also the cases cited in the Government's post trial Memorandum at p. 77.

- C. The defendants argue that the statute is void for vagueness in failing to give adequate notice of the nature of the criminal conduct it prescribes (United States v. Bass, 404 U.S. 336 (1971)). I find no ambiguity in 18 U.S.C. §1955, even as broadly construed in Becker; and certainly no ambiguity of constitutional proportion.
- D. The defendants assert two grounds for granting acquittal on the conspiracy count for insufficiency of proof.

- (1) It is argued that the charge of conspiracy may be abused as a prosecution tool, and that courts should, therefore, scrutinize evidence as to conspiracy vis a vis each defendant with special care. I agree with the spirit of the caution, but find nothing in the record to indicate any abuse in this case, nor any insufficiency of evidence against any defendant.
- defendants were only menial employees, and impliedly incapable of entering into the conspiracy charged. I disagree with the rationale that the status of a defendant as "menial" -- assuming that it is an accurate description -- bars him as a matter of law from conspiring, and I find as a fact beyond a reasonable doubt that the ten defendants referred to did knowingly and wilfully enter into the conspiracy as charged. The cases relied on by the defendants are not to the contrary. They merely hold that a subordinate who was not proven to have been aware of the purposes of the conspiracy must be acquitted for lack of evidence that his action was knowing and wilful.
- E. Anthony Politi, Philip Politi and Harry Weis,

  (joined by the other defendants to the extent applicable

  to them) move to dismiss the indictment as putting them

  in double jeopardy, and on the theory of collateral estoppel

as enunciated in Ashe v. Swenson, 397 U. S. 436 (1970).

(a) <u>Double Jeopardy</u>. Anthony Politi and Weis were indicted, tried and acquitted under Indictment 71 Cr. 857. Philip Politi was charged as a defendant by that indictment, and the case against him was dismissed under a <u>nolle</u> prosequi. Roman and Cuzzo were named as co-conspirators in that case, and Pasquale Maselli, a defendant there, is named as a co-conspirator in the instant case.

The indict/in 71 Cr. 857 charged: 1) that the defendants unlawfully conducted, managed, etc., a policy gambling business in violation of New York Penal Law \$225.10 and \$225.20 under circumstances constituting a violation of 18 U.S.C. \$1955 and 2, and 2) conspired to conduct such a business from on or about March 16, 1971, to May 24, 1971

Items 11 and 12 of the material referred to in the "Stipulation for Double Jeopardy Contention" (Exhibit 27 in the instant case) establish that evidence presented in the former trial goes back as far as the year 1970, thereby antedating the commencement of the conspiracy in this case, September 1, 1970, as alleged in the instant indictment. Furthermore, it is stipulated (Exhibit 27) that 24 of the 58 runner codes identified in seizures presented

in the trial of 71 Cr. 857 were found among the approximately 175 runner codes identified in the so-called Bobbin Inn seizure in this case, and 11 of 20 runner codes found on the tapes seized from Peters and in evidence here, were also put in evidence at the earlier trial. Some of the tapes seized at Bobbin Inn appear to have related to operations in Rockland and Orange Counties, and others to Westchester County.

Finally, the charges in 71 Cr. 857 are, of course, drawn under the same Federal statute as the indictment here.

Given these facts defendants assert, in reliance on such cases as Gavieres v. United States, 220 U.S. 338 and Carter v. McLaughry, 183 U.S. 365, that double jeopardy has attached because the evidence required to support a conviction upon one indictment could have been sufficient to warrant a conviction in the other. There is no doubt that the Gavieres rule is the standard by which the question of double jeopardy is to be determined, but I find that the evidence in neither case would be sufficient to warrant a conviction in the other. The indictment before me, and the evidence presented by the Government relate to a conspiracy "directed" by Anthony Politi, Michael Roman

and Robert Peters relating to activities in Poughkeepsie and Newburgh, New York, whereas the activities proved in 71 Cr. 857 took place in Westchester County. Indeed, it is stipulated (exhibit 38) that "the actual evidence presented in 71 Cr. 857 related solely to gambling in Westchester County." I find that the conspiracy alleged in 71 Cr. 857 describes a different conspiracy factually and in law from the conspiracy alleged and proven in the instant case, and that the evidence presented in either case would not be sufficient to prove the charge in the other. Furthermore, 71 Cr. 857 charges a conspiracy to violate the New York Penal Law §§225.10 and 225.20 whereas, as indicated above, the indictment here alleges a conspiracy to violate §\$225.05 and 225.15, and as Exhibit 38 in this case establishes, none of the evidence presented in the earlier case is the same as that offered here, except for 24 codes of the 151 codes seized at the Bobbin Inn Motel which the Government (at p. 88 of its post trial Memorandum) consents to be stricken from the record, and without which the evidence before me nevertheless is sufficient to prove the case against all defendants beyond a reasonable doubt. Finally, it should be noted that none of the overt acts alleged or proven are common to the two indictments.

Under the circumstances, I find that the holding of United States v. Barzie, 433 F. 2d 984 (2d Cir. 1970), cert. denied 401 U.S. 975 applies. In circumstances similar to those described above, the Barzie Court wrote:

"So far as the indictments indicate, the conspiracies were separate and involved different people. The mere fact that Steenbackker and two other persons were charged with being members of both conspiracies and that both conspiracies involved dealing in stolen credit cards is far from establishing any claim of double jeopardy. Likewise the fact that the periods of time when the conspiracies were operating overlap to some extent is by itself no proof that Steenbakker was charged twice for the same offense. Steenbakker was afforded every opportunity by the trial judge to submit proof on this question, even after the jury verdict in this case. He failed to submit any proof, and it is abundantly clear that there is no merit to his claim."

See also <u>United States v. Buonomo</u>, 441 F. 2d 922, (7th Cir. 1971), <u>United States v. Pacelli</u>, 470 F. 2d 67 (2d Cir. 1972), and <u>United States v. Bargic</u>, 433 F. 2d 984 (2d Cir. 1970).

(b) <u>Collateral Estoppel</u>. In <u>Ashe v. Swenson</u>, <u>supra</u>, the Supreme Court ruled that a verdict of acquittal in an earlier trial

"requires a court to 'examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration."

It is worth noting that the Ashe standard is not whether the issue or evidence could have been the same in both cases, but rather whether the jury "could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration." (emphasis added) I find on the basis of the stipulations before me relating to the evidence of record in 71 Cr. 857, and on examination of the relevant portions of the record itself in that case, that the jury in 71 Cr. 857 could without question have based its verdict on issues other than those sought to be foreclosed in this case; namely, a conspiracy to violate, and violation of gambling laws which were limited to Westchester County -- as distinct from Rockland and Dutchess Counties. I find that the conspiracies and events charged and proven in each case, and the issues, were separate, discreet and distinct, and therefore that the Government is not collaterally estopped in the instant case.

In light of the determinations above and on the evidence presented at trial, I find that the Government has proven its case against all of the defendants beyond a reasonable doubt on each count and the defendants are, accordingly, found to be guilty as charged on each count.

Dated: New York, New York October 23rd, 1973.

MORRIS E. LASKER

\* .. ..

UNITED STATES COURT OF APPEALS: SECOND CIRCUIT

Indez No.

U.S.A.

Appellee,

against

Affidavit of Personal Service

POLITI.

Appellants.

STATE OF NEW YORK, COUNTY OF NEW YORK

80.:

I, Victor Ortega,

being duly suom,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1027 Avenue St. John, Bronx, New York

That on the 16th

day of September

1974 at

Foley Square, New York

deponent served the annexed Appendix, Appellant's Brief

upon

Paul J. Curran, U.S. Attny.-Southern Dist.

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein,

Swom to before me, this 16th

day of September

19 74

Print some beneath signature

VICTOR ORTEGA

ROBERT T. BRIN
MOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975